out-of-court dispute resolution is no longer just an alternative form of resolving legal matters, according to members of the bar and bench alike. It’s also the focus of the Massachusetts Bar Association’s newest section.

Officially approved at the MBA’s March House of Delegates meeting, the Dispute Resolution Section is in many ways a natural evolution of the MBA’s own Alternative Dispute Resolution (ADR) Committee, which has been active for many years. To reflect the field’s increasing and more mainstream use, the Dispute Resolution Section title stands without the familiar “A” for “alternative” that was included in the name of the committee.

“Over the past 25 years, really no area of practice has grown to have a wider impact on legal operations than dispute resolution,” said Brian Jerome, current chairman of the ADR Committee and founder and CEO of Massachusetts Dispute Resolution Services. “Studies show that about 97 percent of all civil cases which are presented result in settlements and never reach trial. What this really means is that dispute resolution has evolved to become the primary means of case management — and not the alternative.”

According to The Law Dictionary’s website, 95 percent of pending personal injury lawsuits end in a pretrial settlement, while legal news site Above the Law reports that only 1.5 percent of civil cases in Massachusetts make it to a jury, Jerome said.

It was these numbers, as well as interest from its members, that led the MBA to create the first section for dispute resolution in the state. “The Massachusetts Bar Association has a really fantastic reputation for professional excellence. … It is fitting that the MBA continues to support evolving legal industries like dispute resolution,” Jerome said.

Exponential growth

The section, which will officially launch Sept. 1 at the start of the 2016-17 membership year, is expected to build off of the working groups that the ADR committee founded. Those groups include the Judiciary Outreach Group, which works with judicial leadership, judges and clerks to encourage the use change that will facilitate greater outreach and service, Jerome said.

MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy said the new DR section will provide members with better resources, as well as “extraordinary” opportunities to network and “perhaps gather new skills.” Vivian Hsu, ADR committee member and principal of Hsu & Associates LLC, said she believes the section will provide “greater recognition for dispute resolution as a profession and not as an add-on,” as well as more engagement with MBA leadership.

Newest MBA section reflects growing field
You can’t be serious all the time

One of the events that I look forward to at the Massachusetts Bar Association is the Annual Dinner. This year was no different — although this year I had the privilege of being the master of ceremonies. It was a great time, and it was even better to see the lawyers in attendance enjoy themselves and, for maybe even a short time, forget about the issues at the office. I’ve been to a number of events that have been nice, but, at times, stuffy. Ours is anything but stuffy.

As I was walking through the crowd I heard one young lawyer call it the “lawyer’s prom,” which I thought was a fitting name. All year long, we deal with serious issues of the bar. One night a year, we put cases and issues aside and just have fun, with the focus on hanging out with other lawyers and having a good time.

Throughout the year, we are proud to sponsor some of our affiliated bars, and it was great to see so many come out and support us at the Annual Dinner. You’re an important part of our family. As always I have to give a shout out to the folks from the Hampden County Bar Association. (See, it is like a prom!) Not only was it a responsible idea, but I could tell that they were having a blast. It could be more than a responsible idea, but I could tell that they were having a blast. It could be more than a responsible idea, but I could tell that they were having a blast. It could be more than a responsible idea, but I could tell that they were having a blast. It could be more than a responsible idea, but I could tell that they were having a blast.

But events like our Annual Dinner remind us that we are members of a very special profession, and we should celebrate that fact. So let’s commit to not taking ourselves so seriously, at least every once in a while. As my great friend and mentor the late Peter Muse always said to me: “You can’t be serious all the time. Enjoy life!” Pete, thanks for the advice. I’ll see you all at next year’s prom!

Robert W. Harnais

Technology, client relations highlight ‘How to Start and Run’ conference

The Massachusetts Bar Association hosted its “How to Start and Run a Successful Solo or Small Firm Practice” conference in collaboration with Western New England University School of Law’s Intellectual Property Law Clinic and the Massachusetts Association of Insurance Auctioneers (MAIA). The two-day event included 24 sessions and 65 participants, with topics ranging from legal ethics to marketing, technology to management. The conference featured keynote speaker, professional development consultant and author Liz A. Smith, who spoke on “How to Start and Run a Successful Solo or Small Firm Practice.”

The program included a panel discussion on “Starting Your Practice,” led by attorneys Michael P. Dwyer, Susan J. Hennessey and John J. Morrissey. The panelists discussed the legal and business considerations involved in starting a private practice, including the role of technology in practice management.

The conference also featured a session on “Technology in the Practice of Law,” led by attorneys Rachel L. Antler and Jennifer R. Mancini. The panelists discussed the benefits and challenges of using technology in the practice of law, including the importance of data security and privacy.

The conference concluded with a networking reception and a panel discussion on “Marketing Your Law Practice,” led by attorneys John J. Morrissey and Jeffrey N. Catalano. The panelists discussed strategies for reaching potential clients, including social media and networking.

The conference was sponsored by the Massachusetts Bar Association’s Solo and Small Firm Practice Committee, with support from Western New England University School of Law’s Intellectual Property Law Clinic and the Massachusetts Association of Insurance Auctioneers (MAIA). The conference was held at the Hyatt Regency in Boston and featured 24 sessions and 65 participants. The conference included a keynote address by professional development consultant and author Liz A. Smith, who spoke on “How to Start and Run a Successful Solo or Small Firm Practice.”

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June

Thursday, June 16
Summer Networking Series Session I
5-7 p.m.
Storrowton Tavern, 1305 Memorial Ave., West Springfield

Friday, June 17
Students in State Custody
10-11 a.m.
MBA, 20 West St., Boston

Wednesday, June 22
Learn from the Doctors: Common Work-Related Conditions
4-5:30 p.m.
MBA, 20 West St., Boston

Thursday, June 23
Workers’ Comp. Settlements after the DiCarlo Decision
4:30-7 p.m.
Holiday Inn, 700 Myles Standish Blvd., Taunton

Friday, June 24
Understanding the Psychological Dimensions of Divorce
1-4 p.m.
MBA, 20 West St., Boston

July

Wednesday, July 6
MBA Monthly Dial-A-Lawyer Program
5:30-7:30 p.m.
Statewide dial-in #: (617) 338-0610

Wednesday, July 13
Volunteer Recognition Dinner
5-8 p.m.
Lombardo’s, 6 Billings St., Randolph

Thursday, July 14
Summer Networking Series Session II
5:30-7 p.m.
The Terrace at Hyatt Regency Boston,
1 Avenue de Lafayette, Boston

Thursday, July 14
Practicing with Professionalism
8:30 a.m.-4:30 p.m.
MBA, 20 West St., Boston

August

Wednesday, August 3
MBA Monthly Dial-A-Lawyer Program
5:30-7:30 p.m.
Statewide dial-in #: (617) 338-0610

Thursday, August 18
Summer Networking Series Session III
5:30-7 p.m.
Tia’s on the Waterfront, 200 Atlantic Ave., Boston

Friday, August 26
End of Summer Boat Cruise
6-8 p.m.
Spirit of Boston, 200 Seaport Blvd., Boston

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MASSACHUSETTS LAWYERS JOURNAL | MAY/JUNE 2016
Rapoza, McGovern honored at Excellence in the Law

The Massachusetts Bar Association honored former Massachusetts Appeals Court Chief Justice Phillip Rapoza (ret.) and Boston Herald reporter Bob McGovern at the May 4 Excellence in the Law event co-presented by Massachusetts Lawyers Weekly. Rapoza received the Daniel F. Toomey Excellence in the Judiciary Award and McGovern accepted the association’s Excellence in Legal Journalism Award.

The judicial and media awards are among several awards given out at the event, which took place at the Marriott Long Wharf Hotel. Others honored at the event included awardees in the categories of Up & Coming Lawyers, and Excellence in Alternative Dispute Resolution, Firm Administration/Operations, Marketing, Paralegal Work and Pro Bono.

Daniel F. Toomey Excellence in the Judiciary Award Honoree: Appeals Court Chief Justice Phillip Rapoza (ret.)

Throughout his judicial career, Rapoza has advanced the role of the judiciary, both in Massachusetts and around the world.

Rapoza received a B.A. in history, magna cum laude, from Yale College and a J.D. from Cornell Law School. Thereafter he served as an assistant district attorney in Suffolk and Bristol counties, and was a partner in law firms in Fall River and New Bedford. Beginning in 1992, he served as a trial judge in the District Court and, subsequently, the Superior Court. In 1998, he was appointed to the Appeals Court, where he served for almost 17 years, none of which as the court’s chief justice. Leading the court during tough economic times, he emphasized greater use of its IT resources, expanding public access through the court’s website, increasing the automation of court operations, and laying the groundwork for the e-filing of appeals.

Prior to his appointment as chief justice, he took an unpaid leave of absence to work for the United Nations in East Timor as the head international judge on the Special Panels for Serious Crimes. The SPSC was a war crimes tribunal established to prosecute crimes against humanity and other serious crimes committed in East Timor during the period leading up to the country’s independence. In his published memoirs, the former head of the UN mission in East Timor described Rapoza as “a tower of strength” in the war crimes process.

Rapoza has subsequently traveled on numerous occasions to East Timor to assist in the development of the country’s justice system. Since his retirement in 2015, he has returned to lead programs on judicial independence and to conduct trainings of Timorese judges. Most recently, he was instrumental in helping to establish East Timor’s first judges’ association.

Prior to his retirement from the Appeals Court, Rapoza was appointed by UN Secretary-General Ban Ki-moon to serve as the international reserve judge on the Supreme Court Chamber of the UN-backed war crimes tribunal in Cambodia, a position that he continues to hold. The tribunal was established to bring to justice senior leaders and judges’ association.

Massachusetts Bar Association leaders and honorees at the 2016 Excellence in the Law event.

Bob McGovern is the Boston Herald’s legal columnist and also works as a reporter for the paper. During his time with the Herald, McGovern has covered everything from high-profile murder trials to “Deltagate” in his Full Court Press column. He also keeps an eye on legal stories that frequently go unnoticed by the media — the inside baseball for the Massachusetts legal system.

When he’s not in court, talking to attorneys or following the federal docket, McGovern is often on the street covering breaking news. He has covered presidential campaigns, fires, murders and even a few college football games. A graduate of the New England School of Law, McGovern joined the Herald’s editorial staff in 2013 after working as an attorney in Boston.

“Bob McGovern has contributed a fresh and informed voice to the Boston Herald’s coverage of big cases and other important legal news, particularly through his Full Court Press column,” said Healy. “Using his unique perspective as a lawyer and a reporter, McGovern has excelled at bringing readers the story behind the story.”

MBA co-hosts MassINC criminal justice reform summit

The Massachusetts Bar Association co-hosted MassINC’s “Third Annual Massachusetts Criminal Justice Reform Coalition Policy Summit: Working Together for Results,” on March 18, at UMass Boston. The theme of the event was the role of cross-agency partnerships within the criminal justice community, focusing on serving individuals with behavioral health conditions, integrating information systems to enable data-driven decision-making and facilitating successful reentry.

The keynote speakers were Hampden County Sheriff Michael Ashe and Essex County Sheriff Frank Cousins. Two of the longest serving sheriffs in Massachusetts, Ashe and Cousins each provided their perspectives on effective cross-agency partnerships.

Following the keynote address, panel discussions were held on “Improving Performance through Cross-Agency Data Sharing” and “Improving Outcomes through Cross-Agency Behavioral Health Partnerships.” MBA President Robert W. Harnais introduced the second panel.

“The Massachusetts Bar Association has been a longtime partner of MassINC and we’re proud to be part of a coalition that works for criminal justice reform across the commonwealth,” said Harnais.

“Beyond the Wall,” a film following a small community of men released from prison and attempting to rebuild their lives in Lawrence and Lowell, was shown at the conclusion of the event.

The policy summit was co-presented by MassINC, the MBA and the Massachusetts Criminal Justice Reform Coalition.
of court-connected DR: the Best Practices Group, which provides programming for practitioners, attorneys and law students on topics that arise in actual dispute resolution practice; and the Law School Outreach Group, which offers seminars, presentations and mock mediations and arbitrations to students, professors and administrators at each law school in Massachusetts.

The Law School Outreach Group’s very existence is a strong example of the increased status of dispute resolution in recent years, according to Sarah Worley, ADR committee member and principal of Sarah E. Worley Conflict Resolution P.C. Indeed, the dispute resolution field itself has evolved and expanded from the traditional mediation and arbitration services to more than a dozen services (see related sidebar).

“When I started practicing law in Massachusetts 25 years ago, this concept [of dispute resolution] truly was an alternative,” Worley said. “The whole notion of DR was not taught in law schools. There were no programs put together by any bar association. Part of the reason was there were very few people who actually were mediation or arbitrator. Over the years, the concept picked up traction. As attorneys and litigants became frustrated with the pace of court system, the demand grew, and the field of providers grew exponentially.”

Catalano said, “Look, most people don’t want to be involved in a courtroom whenever possible. “And you know what? It works. Most of them, once they sit down with their lawyers or arbitrator. Over the years, the concept picked up traction. As attorneys and litigants became frustrated with the pace of court system, the demand grew, and the field of providers grew exponentially.”

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“Often times, [dispute resolution] resolves a case sooner, more efficiently and less expensively than going to a trial,” Catalano said. “There’s no scheduling difficulty. If you pick a date, that’s set in stone — especially for arbitration. Nothing’s going to get changed on you the week before. With trials, it sometimes happens that you get a date, and then all of a sudden it gets postponed for a year or more, which can be frustrating.”

While dispute resolution offers a firm date for the parties to mediate, it can be flexible in nearly every other aspect of the process, Worley said. “Dispute resolution gives parties the opportunity to create the best environment in which they can resolve their particular case,” she said. “The parties have paramount control over who to work with as a neutral. They can control location. They can control time. For people who would find it stressful or impossible to go to one of our courts, dispute resolution can take place anywhere.” Worley has mediated cases at someone’s house, a hospital and an airport. Over the years, the concept picked up traction. As attorneys and litigants became frustrated with the pace of court system, the demand grew, and the field of providers grew exponentially.

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Hirsch Roberts Weinstein LLP: a ‘true business partner’

Just the facts
Firm Name: Hirsch Roberts Weinstein LLP
Year founded: 2008
Location: Boston
Number of attorneys: 17
Managing partners: Jeffrey L. Hirsch and Scott A. Roberts

Are there any specific MBA programs you find particularly helpful to your firm?
The MBA Labor and Employment Law Conference, the Civil Litigation and Labor and Employment Law Diagnostics, the annual NLRB Practice and Procedure Subcommittee meeting, collaboration with affinity bar associations and access to ethics guidance are just a few of the many programs and benefits we find valuable. We also enjoy the fun variety of social and networking events, including Casino night.

The MBA — your firm’s partner
MBA Honor Roll firms have five or more Massachusetts lawyers and enroll 100 percent of their attorneys in the MBA within an association year. Learn more about the many ways the MBA can work for your firm at www.massbar.org/honorroll. Join our growing list of Honor Roll firms by contacting MBA Member Services at (617) 538-0530 or memberservices@massbar.org.

HOD votes to submit comments on access to court records

The Massachusetts Bar Association’s House of Delegates (HOD) voted to submit comments on a proposed Trial Court rule governing access to public records at the HOD meeting on May 19 at the Sheraton Framingham.

In an unanimous vote, the HOD supported the submission of separate comments from both the Criminal Justice Section Council and Probate Law Section Council on proposed Trial Court Rule XIV, Uniform Rules on Public Access to Court Records.

The comments from the Criminal Justice Section Council ask that data from criminal cases and family law cases (except estate cases, as now available) and financial information from these cases not be made available to the public on the Trial Court website. In addition, the comments note the need to address the problem of errors in records and landlords using the online Housing Court database to reject housing applicants who had prior landlord-tenant cases.

Comments from the Probate Law Section Council call for supporting public online access to the following documents: Order of Informal Probate of Will and/or Appointment of Personal Representative, Decree of Appointment of Special Representative and allowed wills. The comments also ask that the Attorneys Internet Portal allow access to imaging of all documents unless otherwise impounded, as well as remote access to all cases, regardless of whether an attorney has entered an appearance.

In other business, the HOD voted to support in principle the proposed changes to HB 4107, “An Act relative to child-centered family law,” made by the Family Law Section Council. The HOD also voted to support in principle HB 43, “An Act relative to the Uniform Electronic Legal Material Act.”

At the meeting, Catalano also presided over the final HOD meeting as president, thanked those in attendance for their continued support throughout the year, Harnais highlighted the creation of a statewide MBA Section 35 Helpline as the most meaningful accomplishment of his presidency.
Inaugural ComCom conference draws a crowd

Nearly 100 practitioners attended the Massachusetts Bar Association’s inaugural Complex Commercial Litigation Conference on April 14 at the Hyatt Regency Boston. Sponsored by the MBA’s Complex Commercial Litigation Section, the conference featured three panels covering intellectual property, bankruptcy and business litigation. The program was bookended by a keynote address from Supreme Judicial Court Justice Robert J. Cordy at the beginning and a cocktail reception at the end.

Thank you to the judges and lawyers who served on the conference’s panels:
• Hon. Brian Davis (Suffolk Superior Court, Boston)
• Hon. Mitchell Kaplan (Suffolk Superior Court, Boston)
• Hon. Janet Sanders (Massachusetts Superior Court, Business Litigation Session)
• Hon. F. Dennis Saylor IV (United States District Court – District of Massachusetts, Boston)
• Hon. Allan van Gestel, ret. (JAMS)
• Charles R. Bennett Jr. (Murphy & King PC, Boston)
• Jerry Cohen (Burns & Levinson LLP, Boston)
• Lee Gesmer (Gesmer & Updegrove LLP, Boston)
• Lee Harrington (Nixon Peabody LLP, Boston)
• Francis C. Morrissey (Morrissey, Wilson & Zafiropoulos LLP, Braintree)

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• Lee Gesmer (Gesmer & Updegrove LLP, Boston)
• Lee Harrington (Nixon Peabody LLP, Boston)
• Francis C. Morrissey (Morrissey, Wilson & Zafiropoulos LLP, Braintree)

Special thanks to the program co-chairs for putting together this successful first conference: Lindsay M. Burke (Kenney & Sams PC, Boston), John O. Mirick (Mirick, O’Connell, DeMallie & Lougee LLP, Worcester), Laurence A. Schoen (Mintz, Levin, Cohn, Ferris, Glovsky & Popeo PC, Boston) and Paul E. White (Sugarman Rogers Barshak & Cohen PC, Boston).

Tiered Community Mentoring Program wraps up 2016 session

The Massachusetts Bar Association’s Tiered Community Mentoring Program wrapped up its seventh year with an event and reception at the MBA in Boston on April 14. Featured speakers were Attorney General Maura Healey (pictured at far right), MBA President Robert W. Harnais (pictured second from right) and Massachusetts Probate and Family Court Chief Justice Angela M. Ordoñez (pictured second from left). In addition, Associate Justice of the Massachusetts Appeals Court Diane L. Mahlensdorff spoke to participating students and presented them with certificates. MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy was also in attendance (pictured at far left).

The MBA’s Tiered Community Mentoring Program provides high school, undergraduate and law school students access to legal professionals, an understanding of the legal profession and an awareness of the career opportunities available. Participating schools are Roxbury Community College, New Mission High School, Community Academy of Arts and Sciences (CASH), Brighton High School, Fenway High School, Suffolk University Law School and Bay Path University.

Apply for the inaugural MBA Leadership Academy class

The Massachusetts Bar Association believes that exceptional leaders are essential to the improvement of our profession. However, there are few opportunities to train young attorneys on how to best lead law firms and organizations.

Continuing its commitment to cultivating leaders who work diligently toward the improvement of our profession and our society, the MBA has developed a Leadership Academy to better prepare young attorneys to assume leadership roles at the bar, in their firms or organizations, and in government.

The MBA’s Leadership Academy — a 12-month program which will run concurrently with the MBA membership year — starts in September 2016. Apply today to be a part of the inaugural 2016-17 class. Applications are due Aug. 1. The curriculum will include educational programming, class projects and mentoring.

To be considered for inclusion in the MBA’s Leadership Academy, candidates should meet the following requirements:
• Active MBA member in good standing
• 3-10 years of legal experience as a member of the bar
• Written nomination by an MBA member other than the applicant
• Submission of two letters of recommendation supporting the candidate’s professional and personal qualifications, MBA experience and potential for future leadership at the bar
• Completion of the application
• Submission of a resume

Nominations for qualified candidates are welcome at leadacademy@massbar.org. Individuals chosen for the MBA Leadership Academy must commit to active participation in all MBA Leadership Academy activities, including quarterly programs. Visit www.massbar.org/leadacademy to complete an application and learn more about the Leadership Academy.
Access to Justice Award winners honored at Annual Dinner

Pro bono Award
Ellen Berger
Hampden County District Attorney’s Office

Ellen Berger has been a dedicated prosecutor in the Hampden County District Attorney’s Office for 25 years. She currently serves as the chief of the Grand Jury Intake Unit, a division of the office that has contact with every law enforcement agency in the county. Described as an unsung hero, Berger plays an important, but often behind-the-scenes role in all Superior Court prosecutions. She screens cases, ensures possible indictments, and demonstrates evidence, contacts law enforcement agencies to obtain additional information, works with assistant district attorneys to prepare and present cases before the grand jury and coordinates the administration of the unsolved homicide cases in Hampden County. A key facet of her work is presented cases to the grand jury, which includes reconstructing the grand jurors on the law by defining the elements of crimes and legal concepts. This position is a meaningful and important role for Berger, who previously served as an assistant district attorney in the District Court and in the Appellate Division of the office. “As a prosecutor, your job is to seek the truth and by doing so, you are protecting and serving the citizens of the commonwealth,” said Berger.

In addition to being a valued and trusted colleague, she has also been praised for her mentoring of younger attorneys as they advance and transition from District to Superior Court. Berger strongly believes that mentoring is a way of paying it forward and ensuring the fairness and integrity of the criminal justice system. “Justice requires well-trained prosecutors. I was mentored by experienced prosecutors and I try to help less experienced attorneys to grow into this important job,” added Berger.

A native of New Paltz, New York, Berger is a graduate of Springfield College and Western New England University School of Law, and was a law clerk to the Justices of the District Court prior to joining the District Attorney’s office.

Pro Bono Publico Award
Charles R. Casartello, Jr.
Pellegrini, Seeley, Ryan & Blakesley PC

A native of Springfield, Charles Casartello Jr. is a partner at Pellegrini, Seeley, Ryan & Blakesley PC, where he concentrates in personal injury, workers’ compensation and Social Security law. Known for his passion and dedication to pro bono efforts, his proudest moment as a volunteer lawyer was representing victims of the World Trade Center attacks in New York City. Recruited by Massachusetts Bar Association Past President Leo V. Boyle, Casartello worked on four pro bono cases, and represented first responders and families who suffered the loss of a loved one in the 9/11 tragedy.

“I was proud to do it. I felt humbled to do it and I hope I brought some solace to those folks and their families,” said Casartello. “Going there and meeting families and victims was really an emotional experience, but also a very fulfilling experience.”

Casartello is chair of the Hampden County Bar Association’s (HCBA) Pro Bono Committee and Hampden County Legal Clinic, which helps provide “Lawyers for the Day” to volunteer to represent pro se clients in the Housing Court, Probate and Family Court, and District Court.

“We’re trying very hard to increase the number of lawyers who dedicate time and talent to pro bono service, because there’s an ever-growing need coming to the courts,” added Casartello.

A past recipient of the MBA’s Community Service Award, Casartello helped facilitate a “Day of Service” program in Hampden County in which volunteer lawyers are made available to the public to answer common questions in areas, such as employment law, landlord/tenant matters and benefits eligibility. Casartello is a past recipient of the HCBA’s John M. Greaney Award for his outstanding citizenship to the law community in Hampden County. In 2000, Casartello received the Harriet Louise Hardy Award for outstanding service to workers in issues of health and safety. In 2003, he was also named a Silent Hero by Griffin’s Farm Children’s Cancer Fund. Casartello is also the 2015 recipient of the Legal Aid Champion Award by Community Legal Aid.

Casartello attended the U.S. Coast Guard Academy and is a graduate of Springfield College and Western New England University School of Law.

Legal Services Award
Valerie Fisk
Community Legal Services and Counseling Center

Valerie Fisk, a supervising immigration attorney at Community Legal Services and Counseling Center (CLASC) in Cambridge, has represented hundreds of clients in immigration proceedings throughout the past 25 years. During her career she has achieved a near 100 percent success rate in immigration cases and legal status for those who have never been deported under her legal guidance. Fisk is deeply committed to providing high quality legal services to immigrants and refugees and acknowledges the importance of the daily work she conducts on behalf of her clients. “A client once told me I had the best job because the work that we do allows people to start their lives over,” said Fisk.

Known as an immigration and domestic violence expert in Massachusetts, Fisk was one of the first attorneys in the state to focus on providing representation in Violence Against Women Act and U-visa cases. She has also been one of the pioneers in successfully representing Special Immigrant Juvenile cases. Fisk has conducted numerous immigration law trainings throughout the commonwealth, and frequently participates in trainings facilitated by the Massachusetts Immigrant and Refugee Advocacy Coalition.

Through training and mentoring, Fisk has helped expand the pool of pro bono attorneys and has taught the nuances of immigration law to a new generation of legal services attorneys. Given the constantly changing landscape of immigration law, having well-trained attorneys is vital to helping clients avoid unpleasant outcomes.

“There are big consequences for people if you don’t do things the right way. People can be deported from the United States, and families can be broken up,” noted Fisk.

Prior to joining CLASC, Fisk was a staff attorney at Centro Presente in Cambridge, and program director of community services at Centro Las Americas in Worcester. Fisk is a graduate of North Park College and Western New England University School of Law. An accomplished musician, athlete, coach, beekeeper and rosarian, Fisk is a person of many talents who not only balances work with her numerous activities, but also brings joy and creativity to her colleagues and clients.

Pro Bono Publico Award
Ingrid Martin
Collora LLP

Described by her colleagues and clients as tenacious, intelligent and a committed advocate for justice, Ingrid Martin is an experienced defense attorney and a co-chair of the Law for Every Generation group for the Massachusetts Bar Association. A partner at Collora LLP in Boston with a primary focus on the health care industry, Martin volunteered in 2009 to represent Joseph Sokolowski on pro bono basis before the Massachusetts Parole Board. Donovan was 17 years old in 1993, when he was tried as an adult and convicted of first degree felony murder. Many, including Martin, felt that his sentence of life without parole was out of proportion, given his age and culpability in a fight that abruptly and unexpectedly turned fatal in the fall of 1992.

Martin has worked relentlessly on Donovan’s behalf for the past seven years, fighting for justice at every step of the process. After a 2013 Supreme Judicial Court decision (Diatchenko v. District Attorney) granted parole eligibility to juveniles convicted of life without parole, Martin succeeded in obtaining a parole hearing for Donovan, who became the first juvenile life without parole inmate to appear before the Parole Board after the landmark ruling. In 2014, Martin’s staunch advocacy ultimately convinced the board to release Donovan after he had spent more than 20 years in prison.

“For the criminal justice system to work properly, somebody needs to stand up and test the government’s evidence,” said Martin.

Donovan is now enrolled in a step-down program, with the goal of soon reintegrating back into society as a free person. That will be a day Martin has looked forward to for quite some time.

“There’s no question it’s going to be the proudest professional moment in my career,” acknowledged Martin. “Life without parole was not the right outcome for Joe Donovan. It took people working on a lot of different pieces, but in the end he is going to get out and have a life, and that is so satisfying because that’s the right outcome.”

Martin is also quick to mention that her selection for this award recognizes many in the legal community who have also advocated for juvenile parole reform.

“I’m the lucky designee for a large group of people who’ve been working hard on the issues around juvenile life sentences without parole,” said Martin.

Born in Switzerland, Martin is a graduate of Harvard Law School and Yale University.

Defender Award
Benjamin H. Keehn
Committee for Public Counsel Services

As a public defender at the Committee for Public Counsel Services (CPCS), Benjamin H. Keehn has never had a boring day since he began working there in 1987. He has dedicated his career to defending indigent, marginalized, and underserved clients, and has advanced the cause of access to justice as an inspirational public servant for close to three decades.

Keehn has worked on more than five dozen reported cases, sometimes as the lead, but often behind the scenes as a member of a collaborative defense team. Reflecting on his career, Keehn acknowledges that the nature of being a public defender is challenging and even heartwarming at times. But constantly striving for justice is the goal that has kept him in the public defender’s office for so many years.

“If you’re doing this type of work in order to be a ‘success,’ or if ‘winning’ is your measure of success, it’s going to be an exercise in futility,” said Keehn. “The actual engagement with the client, the law, the court — the attempt to accomplish something meaningful — is what most rewards me.”

Among his most grateful projects has been aiding clients who were convicted of murder as juveniles and received mandatory life sentences without the opportunity for parole. As a result of his work, juveniles convicted of life without parole whose cases had been on appeal were granted parole eligibility and the right to a fair hearing in the Supreme Judicial Court’s two decisions in Diatchenko v. District Attorney of the Suffolk District Court, I and II. “You don’t often get the opportunity to literally walk a client who has been behind bars for so many years out of jail,” remarked Keehn.

Described by his colleagues as an outstanding litigator with contagious enthusiasm, Keehn has served as a thoughtful mentor to many young lawyers at CPCS. Whether working with one of his clients or a coworker, he has always displayed a willingness to go above and beyond.

Keehn is a graduate of Columbia University and Northeastern University School of Law.
**Rising Star Award**

Margaretta Homsey Kroeger
MetroWest Legal Services

In her own words, Margaretta Kroeger advocates for “people in crisis who are trying to access basic life necessities.” As a government benefits attorney at MetroWest Legal Services, Kroeger assists clients who have been denied or improperly terminated from disability benefits, as well as those who have been denied other government benefits, such as food stamps, cash assistance, unemployment benefits, health insurance and emergency shelter.

Kroeger, a 2010 graduate of Boston College Law School, is passionate about her work with low-income clients, many of whom face physical and mental disabilities.

“To help prevent somebody from becoming homeless or help them access basic benefits is incredibly rewarding,” said Kroeger. “It’s really hard to imagine doing any other kind of work when you see the power that you have to transform people’s lives on a day to day basis.”

While in law school, Kroeger interned in the health and disability unit at Greater Boston Legal Services (GBLS), where she represented clients with disabilities in Supplemental Security Income (SSI) appeals. After graduation she received a prestigious Skadden Fellowship to develop the Transitioning Foster Youth SSI Assistance Project at GBLS, which enabled her to represent youth with disabilities who were aging out of the state foster care system and needed assistance accessing SSI benefits.

In 2014, Kroeger volunteered to serve as co-counsel with the Massachusetts Law Reform Institute in a lawsuit filed against the Massachusetts Department of Transitional Assistance. The suit challenged a new automated procedure for those applying for or receiving food stamps, which resulted in thousands of people being improperly denied or terminated from receiving food stamp benefits.

“I do a lot of individual case work, so it’s been great to have the opportunity to advocate for systemic change on a statewide basis as well,” said Kroeger. A native of Delaware, Kroeger received her undergraduate degree from Harvard University in 2004.

**Lifetime Achievement Award**

T. Richard McIntosh (1948-2015)
South Coastal Counties Legal Services Inc.

Thomas Richard (Rick) McIntosh spent his entire 42-year career working tirelessly to improve the lives of thousands of low-income families in southeastern Massachusetts. As a civil legal aid attorney at South Coastal Counties Legal Services Inc. (SCCLS), formerly known as Legal Services for Cape Cod and the Islands (LSCCI), McIntosh was a trusted colleague and a mentor to many attorneys and paralegals.

McIntosh was dedicated to fighting poverty and advocating for disadvantaged clients. His unparalleled commitment to ensuring that low-income families had access to quality legal representation made him a recognized leader in the Massachusetts legal aid community.

“He found something that he believed in and tried to find a way to do the type of work he wanted to do, which was to protect the less fortunate,” said close friend Thomas Kosman, who helped him launch the McIntosh Foundation and was a trusted colleague and a mentor to many attorneys and paralegals.

As Legal Services for Cape Cod and the Islands (LSCCI), McIntosh was a resident of Falmouth for more than 40 years and was a dedicated community advocate and a leader in the legal aid community.

In 2014, Kroeger volunteered to serve as co-counsel with the Massachusetts Law Reform Institute in a lawsuit filed against the Massachusetts Department of Transitional Assistance. The suit challenged a new automated procedure for those applying for or receiving food stamps, which resulted in thousands of people being improperly denied or terminated from receiving food stamp benefits.

“I do a lot of individual case work, so it’s been great to have the opportunity to advocate for systemic change on a statewide basis as well,” said Kroeger. A native of Delaware, Kroeger received her undergraduate degree from Harvard University in 2004.

**BC Law student wins Oliver Wendell Holmes Jr. Scholarship**

Lauren N. Schaal, Boston College Law School

Third-year Boston College Law School student Lauren N. Schaal is the recipient of the Massachusetts Bar Association’s 2016 Oliver Wendell Holmes Jr. Scholarship. The $10,000 scholarship, established in 2015, is given to a third-year law student in Massachusetts who is committed to public-interest law upon graduation, has a proven record of hard work and academic accomplishment, and has demonstrated integrity and honesty.

This coming fall, Schaal will work as a staff attorney at Community Legal Aid (CLA) in the Family Law Unit. CLA is a nonprofit organization that provides free civil legal services to low-income and elderly clients in central and western Massachusetts. Based at CLA’s Worcester office, Schaal will continue working with low-income survivors of domestic violence, handling family law matters such as divorce, child custody and child support.

In addition, she will be actively involved in community outreach and education initiatives centered on the issue of domestic violence.

“I think it’s really exciting that the state bar association will recognize public-interest oriented students,” said Schaal. “It makes me feel that the bar association and the legal aid community are really important values that I want to pursue in law school.”

In 2015, Schaal served as a legal intern at Casa Myrna Vazquez Inc., Boston’s largest provider of shelter and supportive services to survivors of domestic violence. She provided legal advocacy and Rule 3:03 representation at Probate & Family Court hearings, assisted staff attorneys with research, performed intake for new clients, and drafted motions, temporary orders and pre-trial memoranda for divorce and paternity cases. Throughout the past seven years, Schaal has worked with survivors of domestic violence and sexual assault in shelters, crisis centers and legal programs. During law school she has also served as a legal advocate at the Boston Area Rape Crisis Center.

“I work with survivors of domestic and sexual violence and have since college,” said Schaal, “and I’m honored to be a voice for those clients. Getting recognized with this scholarship will hopefully shed some light on those issues and will allow me to be able to talk more about the needs of domestic and sexual violence survivors.”

At Boston College, Schaal served as note editor for the Journal of Law and Social Justice, was named a Legal Public Service Fellow by the Clough Center for the Study of Constitutional Democracy and was named a Legal Fellow by the Massachusetts Bar Foundation. She was also a member of the Supreme Judicial Court Pro Bono Honor Roll.

“I am recommending Lauren with much enthusiasm and without any reservation,” wrote Kari E. Hong, assistant professor of law, in her letter of recommendation. “In deed, it is difficult for me to think of any prior or student who would be a better fit for this fellowship. Lauren is a brilliant student who will be an outstanding attorney.”

Originally from Omaha, Nebraska, Schaal is a graduate of the University of Nebraska-Lincoln, where she received a degree in political science and communication studies in 2013.
Bar leaders visit Washington for ABA Day

Massachusetts Bar Association President Robert W. Harnais, President-elect Jeffrey N. Catalano and Director of Policy and Operations Lee Constantine participated in American Bar Association Day in Washington, D.C., on April 20. ABA Day gathers bar leaders from across the country to lobby their congressional delegations on issues of importance to the organized bar.

Members of the MBA and Boston Bar Association delegation met with Sen. Elizabeth Warren (pictured top) and Sen. Edward J. Markey (pictured middle).

2016 Elder Law Resource Guide now available


Since 1988, the MBA has celebrated Law Day by organizing free educational presentations about elder law throughout the commonwealth during the month of May. The Elder Law Education Program 2016 guide is made possible due to the assistance and cooperation of the MBA’s Health and Probate Law Section Council and the Massachusetts Chapter of the National Academy of Elder Law Attorneys.

This year, an advisory committee revised and expanded the guide’s 2016 edition, which was distributed to all participating councils on aging, senior centers and attorney volunteers. Some of the topics included in the guide are:

- Commonly asked questions in elder law
- Veterans’ aid and attendance benefits
- Long-term care insurance
- Reverse mortgages
- Medicare Part D/Medicaid
- Long term care regulations and resident rights
- Protecting the home: Homestead and tax exemptions

Harnais urges legislators to increase civil legal aid funding

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.

Open forum on amendments to Superior Court rules

The Massachusetts Bar Association hosted an open forum on March 31 on three Superior Court initiatives to amend court rules pertaining to case management and expert disclosure. MBA Judicial Administration Section Chair Lori Cianciulli (left) moderated the program, which included Superior Court Chief Justice Judith Fabricant (center, right) and Associate Justice Raymond J. Brassard (right). MBA Judicial Administration Section Vice Chair Thomas M. Bond was also in attendance (center, left).
Newton North wins Mock Trial State Championship

Newton North High School was named state champion of the Massachusetts Bar Association’s 2016 High School Mock Trial Program on March 29. The state title is the school’s 10th since 1988, with their most recent prior championship coming in 2004.

Newton North earned the chance to compete at the National High School Mock Trial Championship in Boise, Idaho, May 12-14. A portion of their trip was funded by a $2,500 donation from the MBA’s philanthropic partner, the Massachusetts Bar Foundation.

Newton North and Boston Latin School competed in a two-hour mock trial in Faneuil Hall’s Great Hall. In the fictional scenario at issue, Boston Latin School represented the plaintiff, a former star soccer player who was diagnosed with terminal cancer in 2014, and Newton North represented the defendant, a doctor who performed heart surgery on the plaintiff in 2011 after the plaintiff suffered heart failure following a game.

Hon. Mark D Mason, Massachusetts Superior Court, presided over the mock trial and was assisted by Hon. John D. Casey, Massachusetts Probate and Family Court, and Hon. Margaret R. Guzman, Massachusetts District Court. All three judges commended the students on both teams for performing at such a high level.

“All students conducted themselves in a manner which was more than competent. A manner which demonstrated truly the very best that our profession has to offer,” Mason said in his remarks after the trial. “You have all demonstrated an achievement in advocacy which is rarely reserved even for the finest lawyers.”

Started in 1985, the MBA’s Mock Trial Program began its 31st year in January. The competition places high school teams from across the state in simulated courtroom situations where they assume the roles of lawyers, defendants and witnesses in hypothetical cases. More than 1,500 students at 127 high schools competed in this year’s competition.

MBA President Robert W. Harnais welcomed the students to the historic venue, and thanked the families and coaches of both teams for their support.

“I am delighted to welcome our finalists here to the Great Hall in Faneuil Hall — the place where thousands of new lawyers get sworn in each year,” said Harnais. “Perhaps many of you will go on to become part of the Massachusetts legal community.”

Members win prizes during Appreciation Week

To thank members for their commitment to the Massachusetts Bar Association, the 2016 Member Appreciation Week was held April 4-8. The week featured giveaways and raffles. This year, we also added two exciting new benefits to celebrate Member Appreciation Week: free professional headshots and Trivia Night.

Winners included:

• MBA April 28 Annual Dinner Pass
  Sheldon C. Toplitt
• $100 AMEX gift card
  Samuel S. Reidy of Boston
• FREE conference pass
  Sara Husseini of Springfield and Iliana Diaz of Holbrook
• $250 AMEX gift card
  Eric J. Moreno of Boston
• Free MBA membership plus free LRS membership
  Diana Chea of Lowell

As part of Member Appreciation Week, the MBA hosted a networking Trivia Night on April 7. The event, which featured “Geeks Who Drink quizzes,” brought the laughs.

BAR SEEN

Snapshots from around the MBA

Celtics Night

The MBA’s Young Lawyers Division hosted a Celtics Night on March 2. Members of the division were able to sit courtside for pre-game warmups. The Celtics played the Portland Trail Blazers at TD Garden.
Log in and take advantage of:

- An expansive research library
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Civil Litigation

Feed Your Mind: Mass. Appellate Court Goes Paperless

Tuesday, June 14, 12:30–1:30 p.m., MBA, 20 West St., Boston

Join several Appeals Court clerks for an informative program about the new opportunity for civil practitioners to electronically file briefs and appendices, as well as other documents, in the Appeals Court through a new third-party vendor, Tyler Technologies, without having to file paper versions. This program will cover the basics of registering your firm with the vendor, the many types of documents accepted for e-filing and how to properly format your documents for electronic submission.

Attendants are encouraged to bring their own lunch.

Faculty:
Craig D. Levey, Esq., program co-chair, Bennett & Belfort PC, Cambridge
Courtney C. Shea, Esq., program co-chair, Peabody & Arnold LLP, Boston
Joseph F. Stanton, Massachusetts Appeals Court, Boston
Julie Goldman, Massachusetts Appeals Court, Boston
Tiffany Knapp, Massachusetts Appeals Court, Boston

Family Law

Understanding the Psychological Dimensions of Divorce

Friday, June 24, 1–4 p.m., MBA, 20 West St., Boston

Three seasoned mental health professionals, one of whom is a GAL, will present and then lead an informed discussion regarding the interplay among divorce and grief, uncoupling, personality disorders, and the physiological responses to stress and emotion. The discussion will be moderated by Heidi Webb, who founded Consilium Divorce Consultations, a practice that merges law and psychology.

Faculty:
Heidi R. Webb, Esq., program chair, Consilium Divorce Consultations, Lincoln
Claudia A. Harris, LICSW, BCD, Belmont
Kevin M. Kozin, Esq., ’76 Bedford St., Lexington
Mira Levitt, Ph.D., Natick

Juvenile & Child Welfare Law

Students in State Custody: Legal Chat

Friday, June 17, 10–11 a.m., 20 West St., Boston

This program will focus on school district responsibility for students in state custody. An attorney who represents a school district, the deputy director of Children’s Law Center of Massachusetts, and an attorney from the Department of Children and Families will have an in-depth discussion on this important topic.

Faculty:
Alisia E. St. Florian, Esq., program chair, Murphy, Hesse, Toomy & Lehan LLP, Quincy
Jessica Berry, Esq., Children’s Law Center of Massachusetts, Lynn
Brian R. Pariser, Esq., Department of Children & Families, Boston

Workers’ Compensation

Learn from the Doctors — Common Work-Related Conditions

Wednesday, June 22, 4–5:30 p.m., MBA, 20 West St., Boston

Workers’ compensation attorneys and many others must educate themselves about common injuries, medical conditions and medical procedures to effectively represent their clients. This series will bring medical experts to the MBA to provide you with the information you have been looking for in a congenial group setting.

Faculty:
Lauren Michele Bergheimer, Esq., program co-chair, Ready, Kiernan & McNally LLP, Wareham
Christina M. Schenk-Hargrove, Esq., program chair, Smith Duggan Buell & Rufo LLP, Boston
Martin B. Schneider, Esq., program co-chair, Law Office of Martin B. Schneider, Salem
Alan Curtis

Workers’ Compensation Settlements after the DiCarlo Decision

Thursday, June 23, 4:30–7 p.m., Holiday Inn, 700 Myles Standish Blvd., Taunton

Now that the Supreme Judicial Court has decided the DiCarlo/Martin cases and affirmed the Appeals Court’s ruling in Curry, our panel of experts will address the following questions: 1) How has the landscape changed?; 2) What are some of the strategies that can be used in dealing with workers’ compensation carriers?; and 3) How should one conduct hearings in third-party settlements going forward?

Faculty:
Charlotte E. Glinka, Esq., program co-chair, Keches Law Group PC, Taunton
Lee M. Spano, Esq., program co-chair, Gay & Gay PC, Taunton

Additional faculty to be announced.

Register online at
www.MassBar.org/Education
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Check out these MBA On Demand programs you may have missed and view them anytime, anywhere ...

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• Trials and Tribulations of the MUPC and MUTC (May 26)
• Lifecycle of a Business Part III: Intellectual Property and Data Security and Privacy (May 24)
• 2016 Annual Health Law Symposium (May 20)
• Latest in the Law: Real Estate Law (May 17)
• Latest in the Law: Criminal Law & Juvenile & Child Welfare Law (May 10)
• Offshore Asset Disclosure: Practical Tips and Traps for the Ummay (May 5)
• Post DiCarlo: How Will Workers’ Compensation Lien Recovery Change? (May 3)
Pride, unity emphasized at 2016 MBA Annual Dinner

Camaraderie was the word at the 2016 Massachusetts Bar Association Annual Dinner, held on Thursday, April 28, at the Westin Hotel in South Boston’s Seaport District, when more than 1,000 members of the legal community from across the commonwealth convened in Boston to celebrate their profession among peers and friends.

They were joined by famed Bostonian author Dennis Lehane, whose keynote address took the audience on a humorous trip through a Boston upbringing, illustrating the capital city’s influence on his development as a storyteller.

MBA President Robert W. Harnais in his opening remarks reminded his colleagues that their profession, driven by the love of justice, needs to be protected.

“My first goal this year was to steer our profession back toward civility and camaraderie. We need to return to a profession rather than a business,” he said. “Now, MBA members are leading by example. Not only are we making a difference with each other, we’re increasing the respect of our profession. And that’s what it deserves.

“As lawyers we have an incredible power, but a much bigger responsibility,” he added. “Going out and getting your diploma, passing the bar, making money — that’s what’s expected of lawyers. But going out and making a difference — that’s what’s respected of lawyers.”

Night of awards

Harnais eagerly ushered in the event’s award ceremony, during which a litany of MBA members and allies, both established and up-and-coming, were recognized for their outstanding achievements throughout the preceding year.

First up were the MBA President’s Award winners: Boston Municipal Court Clerk-Magistrate Daniel J. Hogan and attorney George G. Hardiman. The President’s Award honors attorneys for their significant contribution to the work of the MBA, to the preservation of MBA values, to the success of MBA initiatives, and to the promotion of the MBA leadership role within the legal community of Massachusetts.

Harnais then presented Senate President Stanley C. Rosenberg (D-Amherst) with the Legislative of the Year honors. Rosenberg called Rosenberg a public servant with “simply too many accomplishments to mention,” among them a key role in the creation of the bipartisan Criminal Justice Commission, influential advocacy for attorney-conducted voir dire in Massachusetts and spearheading the enlistment of the Council on State Governments’ Justice Center to assess the overall integrity of the Bay State’s criminal justice system.

Rosenberg, in contrast, described himself as “a humble legislator from Western Massachusetts” with the simple goal of bringing society’s concerns with the doors of the State House to further the cause of criminal justice reform in tandem with his colleagues. “We are going to see a lot of change,” Rosenberg said, “in order to help you and your clients get a better situation and better opportunity for fair and responsive justice in the commonwealth.”

In accepting this award, I do so with...
New member benefit: Save on your student loans with Credible

The Massachusetts Bar Association is excited to announce a new member benefit: Credible. Credible makes it quick and easy for MBA members to save on their student loans. Credible is a multi-lender marketplace that allows borrowers to receive competitive loan offers from its vetted lenders. Fill out one form, then receive and compare personalized offers from numerous lenders and choose which best serves your individual needs.

With a founding principle of providing borrowers with the level of transparency they deserve, Credible empowers consumers to take control of their financial futures. Credible is fiercely independent and committed to delivering fair and unbiased solutions in student lending.

VISIT WWW.CREDIBLE.COM/PARTNERS/MASSBAR TODAY AND RECEIVE A $50 BONUS AFTER REFINANCING.

Dues renewals are right around the corner
Renew your MBA membership by mail or online

The MBA reminds you that the 2015–16 membership year is drawing to a close, and membership renewal notices for the 2016–17 year will be distributed soon. As in years past, the MBA offers members two renewal options:

BY MAIL: Renew your MBA membership through the mail with a check or credit card payment. Look for your dues renewal form to come in the mail in mid-July.

ONLINE: Look for a renewal notice via email in mid-July with instructions on how to renew your membership online. We understand how valuable your time is and are happy to offer you this time-saving, green alternative.

As always, thank you for your continued support of the MBA.
ANNUAL DINNER
Continued from page 14

From left: MBA President’s Award Honoree George G. Hardiman and MBA President Robert W. Harnais.

From left: MBA President’s Award Honoree Daniel J. Hogan and MBA President Robert W. Harnais.

尊重和欣赏你为工作所做的一切，以及你对我们的立法机构所做的一切。”

随着Rosenberg的接受演讲，包括Oliver Wendell Holmes Jr. Scholarship to Boston College Law School student Lauren N. Schaal，以及Access to Justice Awards。（见相关故事，本期）

Captivating storyteller

夜被Lehane的演讲所打断，他提到了他的家族和他们的朋友如何每周聚在一起讲述他们农场的趣事，几乎总是设定在爱尔兰。但是，故事的缓存似乎耗尽了，故事被重新编排，但随着不断发展的剧情。不仅如此，不好听的故事——那些没有吸引到心和想象力——就会被大声叫出来。

Lehane在演讲中提到，他对教育文学的多年反思，发现他们正在寻找某种情感的真实。Lehane说：“律师们总是在对抗中，我们总是在法庭上争论。但是，我们不应该这样。今晚，我们把律师们聚在一起，享受彼此的陪伴。我们带回了职业的精神。”

MBA前总统Marsha V. Kazaro-sian在活动结束后说：“它是正确的方向。Bob [Harnais]和所有官员都努力了，这将对每个人都有帮助。”

Kazarosian说，活动目的是“让每个人都聚在一起。”

“这真的能实现，”她说。我们工作很努力，这是一个美好的夜晚。"

Kazarosian描述了法律职业从商业回归到职业化的发展方向。“Bob [Harnais]和所有官员都努力了，这将对每个人都有帮助。”

"你得记住，"她说。你得记住，我们总是在对抗中，我们总是在法庭上争论。但是，我们不应该这样。今晚，我们把律师们聚在一起，享受彼此的陪伴。我们带回了职业的精神。”

JOE KOURIEH is an associate editor at the Warren Group, publisher of Massachusetts Lawyers Journal.

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GENEROUS REFERRAL FEES

Young Lawyers Division hosts social in Worcester

The Massachusetts Bar Association’s Young Lawyers Division and the Worcester County Bar Association hosted a social on May 4 at Mezcal Tequila Cantina in Worcester. Attendees networked with fellow MBA members, WCBA members and distinguished judges.

BAR SEEN Snapshots from around the MBA

From left: Celeste Healy, Supreme Judicial Court Chief Justice Ralph D. Gants, Chief Justice of the Trial Court Paula M. Carey and MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy.

From left: MBA President’s Award Honoree Daniel J. Hogan and MBA President Robert W. Harnais.

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MBF elects 2016-17 officers and trustees

The MBF proudly announces its newest officers and trustees, who were elected at the foundation’s Annual Meeting on March 15.

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A complete list of MBF trustees is available at www.MassBarFoundation.org.

MBF honors Mary Bonauto

At the Massachusetts Bar Foundation’s recent Annual Meeting, Attorney Mary L. Bonauto of GLBTQ Legal Advocates & Defenders (GLAD) was honored with the Great Friend of Justice Award. More than 100 MBF Fellows, grantees and friends attended the event held at the Social Law Library in the John Adams Courthouse in Boston.

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

The Civil Rights Project Director at GLAD since 1990, Bonauto is nationally known for her tireless advocacy to eradicate discrimination based on sexual orientation and gender identity. In presenting the award, MBF President Janet F. Aserkoff noted, “You have upheld the very highest ideals of our profession, and through your extraordinary advocacy and very brilliant legal skills, brought justice and equality to individuals and families, who, before you, were denied rights that they deserve.”

MBF 2016 Annual Meeting

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News from the Courts

High school students participate in Student Government Day at SJC

High school students from schools across the commonwealth learned about the state judiciary and the appellate process during Student Government Day at the Supreme Judicial Court on April 1.

The students began their day participating in activities at the State House and learning about the state’s executive, judicial and legislative branches. Appeals Court Justice Mark V. Green addressed the students on behalf of the judiciary. Lt. Gov. Karyn Polito greeted the students and spoke on behalf of the executive branch. Senate President Stanley Rosenberg and Speaker of the House of Representatives Robert A. DeLeo spoke on behalf of the legislative branch.

The students then went to the John Adams Courthouse, where Supreme Judicial Court Justice Margot Botsford spoke to the students about her role as a judge and the role of the appellate courts within the judiciary. The two clerks of the Supreme Judicial Court, Eric Wetzel, first assistant clerk for the county of Suffolk, who spoke on behalf of Clerk Maura S. Doyle, and Francis V. Kenneally, clerk for the commonwealth, educated the students about their roles as clerks and the history and founding of the Supreme Judicial Court. SJC law clerks also engaged the students in a discussion of their roles during lunch.

Established in 1947, Student Government Day is sponsored by the Massachusetts Department of Elementary and Secondary Education to encourage students to learn about the role and function of the three branches of government through observation and active participation.

Appeals Court launches electronic filing pilot project

The Appeals Court has launched an electronic filing pilot project as of March 31.

The pilot includes all civil, non-impounded appeals subject to review by a three-judge panel. A case initiation document (Civil Appeal Entry Form), electronic payment of entry fees, and many types of motions and other documents may be electronically filed and served through the Massachusetts Court System Odyssey File and Serve Site. In May, the pilot will expand to include the electronic filing and service of briefs and appendices in all civil, non-impounded panel cases.

Any Massachusetts attorney may register to participate in the e-filing pilot. Before participating, all filers should become familiar with the Interim Electronic Filing Rules for Pilot Courts, the Appeals Court Order Concerning Electronic Filing Pilot Project and the helpful training and guidance materials, which are all located on the Appeals Court FAQ Guidance page at www.mass.gov/courts/court-info/appealscourt.

Comments sought on proposed amendments to SJC rules

An update to the Supreme Judicial Court’s “Notice Inviting Comment” section has been posted seeking comments on proposed amendments to miscellaneous rules.

For a full listing of the notices, visit www.mass.gov/courts/case-legal-ees/rules-of-court.

Com.Com’s IP Practice Group meets on trademark law

The Complex Commercial Litigation Section’s Intellectual Property and Business Litigation practice groups hosted a meeting on trademark law on May 3. From left: Thomas E. Kenney, Esq., co-chair of the Trademark Practice Subcommittee, guest speaker Jennifer D. Chicoski, administrator for Trademark Examination Policy & Procedure from the Office of the Commissioner for Trademarks at the U.S. Patent and Trademark Office; and Damian R. LaPlaca, chair of the MBA’s IP Practice Group.
Technology is revolutionizing practice management—and clients are reaping the benefits

BY P. TYLER SUMMERS

Slowly but surely, technology is revolutionizing the practice of law. At the solo and small firm level, the law offices of just a decade ago bear little resemblance to those of today. The proliferation of mobile devices and widespread use of “the cloud” have streamlined practice management, allowing for enhanced client collaboration, decreasing the need for administrative support and eliminating costly overhead. At my divorce and family law firm in Newton, I utilize a slew of ingenious cloud-based services and apps to manage my operation. The heart of my practice is Office 365, an inexpensive, cloud-based practice management service from Microsoft. It hosts e-mail, provides browser-based access to the programs we are familiar with (Outlook, Word, Excel, and PowerPoint) and offers a terabyte of encrypted file storage. Not only does this service eliminate the need to maintain its own server, but I can also access all of my case files remotely, whether at court or on the beach. It should be noted that Google offers a similar product, utilizing the Gmail interface with which we are all so familiar.

The cloud also offers a secure platform for client collaboration. With a simple link and a password, clients can access their files securely, allowing them to review, redline draft pleadings, resulting in more effective advocacy. Client reaction to enhanced collaboration has been wildly enthusiastic—particularly from those who worked with other counsel prior to retaining my office.

As a family law litigator, I often work with mothers and fathers who juggle parenting responsibilities and full-time careers. Due to professional demands, their ability to meet with me during normal business hours is limited. For them, being able to remotely access their case file at times of their choosing is a game changer. In fact, I recently represented an executive who travelled to Asia two weeks of the month. Given the 12-hour time difference, one would imagine that lawyer-client interaction was an insurmountable obstacle. However, by employing cloud technology, the client could review documents and collaborate on various aspects of her case from her hotel room after work; when I would arrive at my office the next morning, I received notification of the client’s collaboration. Without such cloud-based tools, my representation would be far less efficient and costlier for the client.

Leverage an IT professional and/or support from your cloud provider of choice to deal with technicalities and troubleshooting.

Train Attorneys and Staff

Finally, training is essential to ensure a successful transition to a cloud-based system. Everyone in your office should be trained in how to upload, organize, access, and secure information in the system. It’s 2016; clients should have remote, on-demand access to their case files. While more lawyers are adopting this view, many law firms continue to employ older technology, requiring lawyers to take a more manual, time-consuming and costly approach to representation. Microsoft Office 365 and Google Apps for Work are great tools for lawyers to utilize before making the jump to more comprehensive practice management software, such as Clio or Rocket Matter. For those who have just hung their shingle and are trying to minimize overhead, the inexpensive options are more than sufficient.

P. Tyler Summers concentrates his Newton-based practice in the negotiation and litigation of complex divorce and family law matters. Prior to founding his own office, Summers honed his skills at a prominent domestic relations firm, served as a criminal prosecutor (Rule 3:03) and worked with judges at multiple trial courts, including the federal court.

Everybody’s doing it—are you ready to move your practice to the cloud?

BY HEIDI S. ALEXANDER

Using the cloud in your practice can provide a plethora of benefits, including increased mobility, productivity and even security. Once you’ve made the decision to move your practice to the cloud, you should approach the move through a series of preparatory steps. Whether you’ve only recently started your practice or have a long-standing shop, preparation is an essential component in moving your practice to the cloud in a seamless manner. If you are just starting out, you have the luxury of adopting cloud-based systems straight away without having to worry about transitioning years of data and changing the way your firm does business. Consider the following steps to help accomplish a successful transition to the cloud.

Take an Inventory of Your Current Systems

First, take an inventory of your current systems (i.e., file storage, matter management, financial management, administration) to determine your firm’s needs. If you are a new firm, this information should come from your business plan or be written into your business plan. If you are an existing firm, you’ll need to compile this data.

Conduct Research and Due Diligence

Next, it’s time to search for cloud platforms that can accommodate your firm’s needs. To maximize your firm’s efficiency, your goal should be to find cloud-based products that will service multiple needs or integrate well with other services to streamline your workflow and make it easier to collaborate. For example, cloud-based practice management programs now include time and billing features as well as matter management, tasks and calendaring. Some even include accounting/financial management features or integrate with financial management programs. You’ll also need to conduct due diligence to ensure that the cloud provider(s) meets your ethical and legal obligations.

Determine What, When and How Data will Move to the Cloud

What:

In determining what and how much data to transfer to the cloud, there are a few options:

1. All Files: This is a good option if you are starting from scratch or already maintain most of your files in electronic format.

2. Open Matters and Frequently Accessed Information: For firms that have been in operation for a number of years and have accumulated a plethora of records and information, it may be most efficient to upload only open matters and frequently accessed information (i.e., contacts, notes, administrative files) to the cloud.

3. When New Matters Open and New Information is Obtained: This is an ideal option for longstanding firms that don’t wish to spend the time transferring records back in time. Pick a date, and from that date forward enter all new records and data into your cloud-based system.

4. If you choose not to transfer all your data to a cloud system, you’ll want to maintain your office to function and maintain it in your processes — for example, start with a conflict check in your cloud-based system and also check your legacy system. Over time, you’ll phase out your legacy system.

When:

Set a timeline. Rather then attempting to do it all in one day, take an incremental approach, which should include alerting staff to upcoming changes.

Consider what makes the most sense for your practice. Is there a traditional hall in client intake? Do you plan to close any major cases in the upcoming months? When can your budget handle a reduction in caseload (consider reserving funds for the transition period)?

How:

If your records are already electronic, you are in good shape. If not, you’ll need to first convert your paper files to paperless format (at least, for those files you plan to upload to the cloud) and back up your data.

The Massachusetts Bar Association hosted a “Mediating with Municipalities: Practical Advice on Initiating Municipal Mediation and the Secrets of Successful Outcomes” program on May 3. The program sponsored by the Alternative Dispute Resolution Committee, and offered attendees an opportunity to learn more about how to get a municipal conflict to the mediation table. Faculty included (from left) John W. Fieldsteel, Sheila A. Ellman-Pearl, Kerry T. Ryan and Sarah Worley.

BAR SEEN Snapshots from around the MFA

Practical advice on mediating with municipalities
**NOTABLE & QUOTABLE**

“It’s almost like there was a boxing match where one guy entered the ring with his hands tied behind his back, while the other guy punched away.” — Peter Elikann

MBA Criminal Justice Section Chair Peter Elikann was quoted by the Boston Globe on June 3 (“SJC orders new trial in ‘shaken baby’ case”) after the Supreme Judicial Court ordered a new trial for a man convicted of violently shaking his daughter because his trial counsel did not challenge the commonwealth’s medical expert. Elikann said the decision was “a clarion call to lawyers that you can’t leave this medical testimony absolutely unchallenged, without, at the very least, presenting another version of what could have happened.”

“Bill would require first-time drunk drivers to use ignition interlocks.” Springfield Republican (April 26) — MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy was quoted on the legal concerns around a bill (S.1895) that aims to put more ignition lock devices into cars of first-time drunken driving offenders.

“MassHealth’s termination of Medicaid benefits overturned.” Massachusetts Lawyers Weekly (April 25) — MBA member Gina M. Berry weighed in as an elder law expert following an Appeals Court decision involving irrevocable trusts as a Medicaid planning tool.


“Mass. Bar Association honors 2 with Canton roots,” Canton Journal (May 6) — MBA members and President’s Award winners Boston Municipal Court Clerk-Magistrate Daniel J. Hogan and attorney George G. Hardiman were profiled in Canton.

“Against the grain,” Massachusetts Lawyers Weekly (May 2) — MBA member Howard G. Zaharoff was quoted in the Hearsay column as a copyright law expert in a story about a federal lawsuit over alleged similarities in books involving gluten-free diets.

“Solve it 7: Zika virus,” WHDH-7 News (May 19) — MBA President Robert W. Harnais was the featured legal expert in a “Solve it 7” case concerning a refund on plane tickets.

“Opioid crisis touches wildlife center in Weymouth,” Boston Globe (May 13) — MBA President Robert W. Harnais was quoted in the Boston Globe about the MBA’s Section 35 Helpline, which provides free legal assistance to families struggling with a loved one’s addiction. Harnais was one of eight speakers at a meeting on drug addiction hosted by the New England Wildlife Center.

“We know that legal aid makes a tremendous difference when it comes to assisting low-income residents keep their housing from illegal foreclosure or eviction. But it’s one thing to know it, it’s quite another to see it in action from inside a courthouse. We’re grateful to Reps. Barber and Brodeur for taking the time to learn more about this important issue.” — Robert W. Harnais

Massachusetts Bar Association President Robert W. Harnais was quoted in a piece on May 16 in the Medford Transcript about a tour of the Boston Housing Court for legislators organized by the MBA, Equal Justice Coalition, Massachusetts Legal Assistance Corporation and Greater Boston Legal Services.

Quoted in the media? Let us know. Email JScally@MassBar.org.
Burdened by disturbing ideas

Q: I am far from organized and orderly in my life, so you wouldn’t think of me as obsessive-compulsive, but I do have a symptom that I’ve been told may indicate OCD. Even during my work day (commercial litigation for a medium-sized firm), I cannot fully shake the thought that I might inadvertently do some kind of harm to our baby. This is despite the fact that my wife, who has taken a break from her career to be at home with the baby, is a great, attentive mother, and that I have never actually done anything harmful to any child (or to any adult beyond a scale that would apply to pretty much anyone).

A: To begin with, there is a difference between Obsessive Compulsive Personality (a type of personality disorder) and Obsessive Compulsive Disorder (OCD). People with personality disorder tend to have an exaggerated need for order, detail and inflexible obedience to rules. People with OCD are filled with anxiety about persistent, disturbing thoughts (obsessions) and feel compelled to engage in a recurrent behavior (such as checking to be sure the gas stove was turned off, or washing hands many times a day out of a fear of inadvertently do some kind of harm) to provide momentary relief.

Sometimes, as in your case, there is an obsession without a compulsion (I’m not diagnosing you long-distance — there are other conditions associated with rumination and worrying, but let’s assume that it’s obsessive OCD for the sake of this Q&A).

Traditional therapies, such as those focusing on developing insight, may or may not do much for OCD, and for many individuals, recovery is anindi- rect process. But in most cases symptoms can be significantly reduced with specialized treatment.

The main forms of treatment are:
- Cognitive Behavior Therapy (CBT) of a specific sort, working with your thought patterns.
- Behavior therapy. This is a form of therapy in which the idea is to extinguish unhelpful behaviors (very effective for compulsions; less easily applied to obsessions).

To others like me, who aren’t formally diagnosed with OCD, the main thing to remember is that OCD may not be easy to identify, but it can absolutely be managed, and with persistence and the right kind of help, you can live a relatively normal life.

People with Obsessive Compulsive Disorder tend to have an exaggerated need for order, detail and inflexible obedience to rules. People with Obsessive Compulsive Disorder are filled with anxiety about persistent, disturbing thoughts.

Dr. Jeff Fortgang

Five common disagreements when valuing privately held companies

BY BRIAN Dies, CFA

Valuing small, privately held companies is a challenging task, as inherent data limitations often provide fertile ground for judges, lawyers, and regulatory bodies to challenge the opinions of business valuation professionals. There are five general areas where business valuation professionals most commonly disagree when valuing privately held companies.

Fundamentally, many of these disagreements between valuation professionals are the result of an “information asymmetry.” In the absence of robust public information on privately held companies, business valuation professionals often are required to subjectively apply and adjust information from the universe of public companies to smaller, privately held firms. In valuations of closely held businesses, many of the disagreements between valuation professionals stem from these subjective adjustments. There are a few areas where lawyers commonly see differences in valuations of privately held companies resulting from different subjective decisions made by valuation experts.

Measurement of Risks Associated with Firm Size

A key variable in most business valuations is the measurement of risk associated with owning the equity of the subject company. The measurement of risk for privately held companies requires subjective analysis and is often one of the key areas of disagreement among valuation professionals.

Most valuations accept that, all other things being equal, owning equity in smaller public companies is riskier than owning equity in larger public companies. However, there is no consensus in the business valuation community on how to extend that size to risk relationship to smaller, privately held companies.

Tax Issues Related to Corporate Structure

As with measurements of risk, much of the challenge in assessing the impact of taxation on the value of a business arises from information asymmetry. Nearly all of the robust information on the valuation of public companies involves the valuation of C corporations that are subject to double taxation. However, privately held firms are commonly structured as pass-through entity tax structures. Valuation professionals can often disagree on the appropriate adjustments to account for the difference in tax rates arising from differing corporate structures.

Compensation Adjustments for Employee-Owners

In valuing a privately held business, it is often necessary to separate the employee-owner’s reasonable salary from earnings from his/her ownership interest. The value of the business is tied to the earnings as the owner, not the salary as an employee. However, the reasonable salary and the equity earnings are often commingled in the company’s financial statements.

The relative size of the compensation adjustment made by the valuation professional for employee-owners is a contentious topic in most valuation-related disputes.

Application of Discounts and Premiums

It is generally accepted that ownership interests in privately held companies face some reduction in value for illiquidity. This is typically addressed by a Discount for Lack of Marketability (DLOM). A DLOM can significantly impact the value of the equity of a firm and is often an area of disagreement among business valuation experts. Lack of marketability is, almost by definition, an issue faced exclusively in the valuation of privately held firms.

Another major source of discounts and premiums in business valuation relates to the level of control by the owner of a given equity interest. Smaller companies are more likely to have few investors with majority equity interests. Accordingly, control premiums and minority discounts are much more relevant in the valuation of small, privately held companies. The best practices in the business valuation community are evolving on how to measure and apply premiums for controlling interests in primarily held businesses. This is another area of complexity specific to the valuation of privately held companies.

Value May Be Tied to Individuals and Not the Enterprise

In certain valuation contexts (e.g., marital dissolution, gift/estate tax), it is especially important to separately identify the goodwill associated with the key individuals associated with the business (e.g., lawyers and owners). The key issue is: who is associated with the business itself (enterprise goodwill)? Although there are certain frameworks for this analysis, the allocation of personal and enterprise goodwill is subjective and relies on the professional judgment of the valuation professional.

Valuing privately held companies is a challenging task commonly faced by business valuation professionals, lawyers, and accountants. There are five common areas of disagreement in disputed valuation matters, and each stems from either a lack of robust public information on peer firms or from the specific size or structure of most privately held businesses. In disputed matters, lawyers should be particularly attuned to differing assumptions in these five areas and their potential impact on the valuation conclusion.

Brian Dies, CFA, is a principal at Ahmann Alvary & Co. LLC in Houston. He provides focus on business valuation and financial consulting matters, including providing expert witness testimony in litigation and arbitrations.
The Massachusetts statute govern- ing nonprofit corporations, M.G.L. c. 180, was originally adopted in 1971. For the past 45 years, this statute has governed the formation and operation of nonprofit organizations in Massachusetts. Efforts are underway by a working group from the Boston Bar Association to propose changes to the Massachusetts nonprofit corpora- tion law. It will be important to con- sider those changes, and their potential impact on the formation and operation of nonprofit corporations in Massachusetts.

Law Needs to be Modernized

In 2004, Massachusetts adopted a new Business Corporation Act, M.G.L. c. 156D. The new BCA updated the law previously applicable to business corporations. The new BCA is based on the American Bar Association’s Revised Model Business Corporation Act, which is the basis of the business corporation statutes in most states.

The new Massachusetts BCA has options that were not available under the old corporation law, M.G.L. c. 156B, regarding corporate govern- ance. The new BCA explicitly recog- nizes various types of notice, and mod- ern forms of communication, includ- ing electronic transmissions. The new BCA is more flexible in allowing re- mote participation in corporate meet- ings. The new Massachusetts business corporation statute recognizes entities like limited liability companies, and reorganization transactions like do- mestications and conversions, that did not previously exist in Massachusetts.

A business enterprise has several options to consider when deciding on an entity through which to conduct its for-profit operations. Options include a corporation under the new Massachusetts BCA, a limited liability company under the relatively new Massachusetts LLC statute, or a non-Massachusetts business entity. However, a nonprofit enterprise in Massachusetts is largely limited to organizing as a non- profit corporation under Chapter 180, many of whose provisions are vague, cum- bersome, old-fashioned and outdated.

One example of outdated language is in M.G.L. c. 180, § 4, which lists the specific purposes for which a nonprofit corporation may be formed in Mas- sachusetts. This list includes such pur- poses, that originated in earlier times, as “promoting temperance or morality in the use of alcoholic liquors,” “fostering, en- couraging or engaging in athletic ex- ercises or yachting” and “the associa- tion and accommodation of societies of individuals.” The founding Knights of Pythias or other charitable or social bodies of like character and purpose.”

A modern statute would gener- ally allow incorporation for any non- profit purpose.

Another example of an outdated provision is the local investigation provision. Chapter 180, § 5 prohibits a corporation from organizing unless the corporation has paid the expenses of the investigation before issuing a certificate of incorpora- tion, or approving a change of loca- tion of the principal office of a Mas- sachusetts nonprofit corporation. The State Secretary may refer the matter to the appropriate city or town for a local investigation. The purpose is to determine if the incorporators, officers or others identified with the corpora- tion have been engaged in the illegal selling of alcoholic beverages, keeping of gaming or of horse racing, keeping of horse breeding business prohibited by law, or are per- sons of ill repute. The current regula- tions under the Office of the Secretary of State indicate that the Corporations Division now dispenses with the local investigation if a statement is signed by the incorporators regarding the lack of convictions by the incorporators and officers for crimes relating to al- cohol or gaming in the past ten years.

Chapter 180 also has various spec- ialized provisions, that appear to have originated in the late 1800s or early 1900s, relating to conferring degrees by medical corporations (M.G.L. c. 180, § 13), horse breeding corpora- tions (M.G.L. c. 14), and medical malpractice corporations (M.G.L. c. 180, §§ 20-25).

The most outdated feature of the Massachusetts nonprofit corporation statute is that it does not comprehen- sively cover, within Chapter 180, all aspects of the organization and opera- tion of a nonprofit corporation. Instead Chapter 180 refers to and incorporates the old Massachusetts Business Cor- poration Law, Chapter 156B, as the law governing nonprofit corporations. One effect of this is that the improvements brought to corporate practice by the new Massa- chusetts BCA are still inapplicable to the large number of nonprofit corpora- tions in Massachusetts.

Corporate Operations Can Be Cumber- some

The Massachusetts nonprofit corpora- tion statute does not easily accom- modate fundamental corporate trans- actions if the corporation has a large number of members, which is a char- acteristic of many nonprofit corpora- tions. Chapter 180 requires the approv- al of two thirds of all voting members in order for a nonprofit corporation to amend its articles of organization, to dispose of its assets, or to merge with another corporation. With a large vot- ing membership, obtaining such a vote can be impossible or difficult. M.G.L. c. 180, § 7A, prescribes a process to peti- tion the state secretary for approval of charter amendments and mergers, when the two-thirds vote cannot be achieved. While the state secretary’s office has been very helpful to corpo- rate practitioners, there is no definition of the tutions, the process under Section 7A still involves significant planning, risk and expense in order to be sure that the Section 7A standards are satisfied.

Another provision of the Massachusetts nonprofit corporation statute to spe- cifically recognize modern methods of communication and voting also creates difficulties when considering corporate mem- bership. There would be an advantage to large membership corporations if provisions similar to those in the new Massachusetts BCA, that allow for electronic communications, and alter- native forms of notice, were part of the nonprofit corporation statute.

The nonprofit corporation statute limits the types of mergers in which a Massachusetts nonprofit corpo- ration may engage. Under M.G.L. c. 180, a nonprofit corporation may merge with another nonprofit corpo- ration if such other corporation law so permits. This statute does not al- low for mergers with limited liability companies or other non-corporate en- tities. Because the merger provisions of M.G.L. c. 156B do not address mergers with nonprofit corporations, a Massachusetts nonprofit corporation may not directly merge with any Mas- sachusetts corporation, for example, a cooperative corporation under M.G.L. c. 157, that is still governed by M.G.L. c. 156B.

There are also issues regarding whether remedies to enforce director and officer duties, such as derivative actions by members of a Massachu- setts nonprofit corporation, are avail- able in Massachusetts. This is unfortu- nate because the need for an effective remedy to address breaches of officer and director duties applies as much to nonprofit corporations as to for-profit corporations.

New Areas, Newer Statutes

The new Massachusetts BCA, the ABA Model Nonprofit Corporation Act and newer state nonprofit corpo- ration statutes have provisions that, if adopted in Massachusetts, could improve the operation and governance of nonprofit corporations in Massachu- setts.

The new BCA and Model Non- Profit Act recognize electronic means of communication in various areas. Those acts also allow not only for notices by the traditional methods of mail and hand delivery, but also, un- der appropriate circumstances, by electronic communication, orally or by newspaper of general circulation, radio, television or other form of pub- lic broadcast communication. These acts allow for annual or other meetings to be held by means of the internet or other electronic communications technology where members can participate in the meeting simultaneously or concurrently with their pro- ceedings.

The Model Nonprofit Act includes several provisions that would remove impediments to corporate action when there is a large membership. This act has provisions allowing a membership corporation to operate with delegates and/or officers. The Model Non- Profit Act also allows for approval of proposed corporate actions by ballot. This act allows for a relaxation of quo- raton requirements if members’ meet- ing must be adjourned due to a lack of quorum.

Moreover, the Model Nonprofit Act provides regarding authorization of extraordinary corporate actions allow much more flexibility in obtaining the required approval of members. Thus, a majority of the members, or a greater number vote may be required by the organizational documents or by the directors, a proposed charter amend- ment, a plan of merger, a disposition of assets outside of the ordinary course of a nonprofit corporation’s activities, or a dissolution of the corporation, may be approved by a majority of a quorum at a properly called meeting.

Nonprofit corporations, particular- ly charities, now recognize the impor- tance of having and enforcing conflict of interest and related policies. While M.G.L. c. 180 includes standards by which directors and officers of a non- profit corporation must perform their duties, the Model Nonprofit Act has more robust provisions that address manager duties, conflict of interest sit- uations and remedies for enforcement.

Thus the Model Nonprofit Act includes a duty by an officer to report to his or her superiors information known to be material to the superior officer, board or committee, as well as to report of any actual or probable material viola- tion of law or material breach of duty by an officer, employee or agent of the corporation. The Model Nonprofit Act includes provisions to validate trans- actions involving conflicts of interest, with a new call for disclosure and approval by disinterested directors or members. The Model Nonprofit Act includes provisions specifically per- mitting members or directors to be derivative proceedings in the name of the nonprofit corporation. The more recent amendments to the nonprofit corporation statute contains stricter requirements for approval of related party transactions, and maintenance of conflict of interest and whistleblower policies by the corporation.

The Model Nonprofit Act and new Massachusetts BCA allow for domes- tication, by which a corporation may change its state of incorporation, and conversions, by which a corporation may convert to a different entity. These options do not exist under M.G.L. c. 180.

Need to Preserve Massachusetts Traditions

Provisions like those described above would give nonprofit corpora- tions much more flexibility in how it can take corporate action, allow better participation by members and...
Family tensions make great, often amusing drama — like *Juno*, *Juno*, *the Corleones*, the Simpsons and the Bunker household at 704 Hauser St. We love the eccentricity, back-stabbing and lampooning of illusory notions of family harmony. One way or another, we can all relate. We all have families.

And many of us represent them. Lawyers who represent beneficiaries and fiduciaries know that probate litigation is rarely a laughing matter. With its focus on emotional, social and economic needs are met.

Word involvement is “emotion.” In many cases, the inter-family disputes have fester for years. He stresses that family conflicts are “often not about the money” and that “extensive litigation is a prescription for emotional cancer.” Jerome notes that mediation “sets the groundwork for future relationships.”

Honoroff maintains that understanding the “psychological stuff” is important. From the beginning of a mediation, Burbank tries to be empathetic. Honoroff stresses that paying attorneys is only a “small part of the deal.” To deflect responsibility away from those involved in the litigation, Honoroff helps clients understand that others, e.g., parents, helped set up the conflict. “If parties can be objective about the fact that mom gave the recalcitrant brother wide discretion as trustee or that dad intentionally named the evil step-mother as the primary beneficiary of the trust, then parties may be able to turn resentment into compromise.”

Mediation of course offers no guarantees and often parties will walk away. “That’s alright,” says Burbank.

The Role of the Lawyers

Honoroff, Burbank and Jerome agree that lawyers can both assist and thwart successful mediation. “Lawyers can be incredibly helpful,” says Honoroff. Often lawyers are working in the private breakout sessions “behind the scenes” to help clients understand the benefits of resolution and the uncertainty and expense of further litigation, including a trial. Even though most lawyers consider it to be a collaborative process to discern, Jerome notes that “good mediators need to hear directly from the parties, at least during the private session.”

But lawyers can be impediments. Sometimes lawyers are “too caught up in zealous advocacy,” Honoroff says. They emphasize the “adversarial” side of settlement discussions and “not the collaborative side.”

Burbank laments that the mediator sometimes has to overcome “unrealistic expectations” planted by one or both of the lawyers. He warns that lawyers should be careful not to get too invested in his or her clients’ grievances.” In Burbank’s experience, mediation is also more difficult when lawyers “unload on other parties.”

At some point, mediators will often try to engage just the lawyers. Burbank and Jerome both recall experienced counsel together to discuss the issues and potential settlement terms without their clients. If the lawyers agree, they say, there is a greater likelihood of resolution or at least progress in narrowing the disputes.

Honoroff is admittedly “less quick” to pull the lawyers aside. He prefers trying to “empower clients.” But he concedes that in probate disputes “sometimes empowering is a disaster.”

Timing of Mediation

Lawyers and parties spend a lot of time trying to figure out at what stage they should engage in mediation and agree that mediation is most likely to resolve the disputes. Before litigation? Right after filing suit? After discovery? On the proverbial eve of trial?

Every case is of course unique, and Honoroff believes that there are no general answers on the best timing for a successful mediation, but he generally believes the earlier the better. Burbank agrees and observes that he is seeing mediation earlier in probate disputes.

Maximizing the Chances for Resolution

A lawyer can do many things to try to increase the likelihood of an appropriate, if not necessarily good, settlement. Lawyers should be careful not to channel their clients’ emotions; they should try to maintain objectivity, and should stress the many financial and psychological benefits of not having the dark cloud of probate litigation hanging over a client’s head. Mediators can help everyone understand that in family feuds trials rarely bring vindication; that fact-finders are rarely outraged; that mediation may lead to a creative solution beyond what a court can order, and that investment in probate litigation is almost always a fiscal crap shoot.

We all know the old adage that the mark of a good compromise is when no one is happy. And we cannot forget the old joke that if you have a perfect case (and no one of course has a perfect case) you have an 80 percent chance of winning. Sharing these precepts with clients is probably a good idea in advance of any mediation.

Emotion, Emotion, Emotion

Jerome quickly points out that in probate litigation, the “biggest
Who can afford to live in Boston or the ‘burbs anymore?’

BY MELANIE HAGOPIAN

On Jan. 26, 2012, Supreme Judicial Court Justice Ralph D. Gants held a public hearing on proposals that seek to amend the state’s eviction laws and in essence, cap rents in the state. As real estate attorney and housing policy expert, I always advise clients that being a landlord in Massachusetts carries the most severe and detrimental impact to the property. In the Greater Boston Housing Report Card issued March 31, 2015, Barry Bluestone notes that we are now at the point where it takes an annual income of $100,000 to afford Boston’s median monthly rent. With no foreseeable end to dramatic rises in housing and rent costs, is there any way to address the lack of affordable housing? Inclusionary housing programs may offer some solutions. These programs, as well as cut and run (also known as ‘no-fault’ rent increases), are not new, and have evolved over the years. As M.G.L. c. 40B, R and S. Known as The Comprehensive Peremptory Act, M.G.L. c. 40B was enacted in 1969 to allow developers of affordable housing to override certain municipal zoning bylaws. The goal was to encourage the production of affordable housing by reducing barriers created by local building permit processes, zoning and other restrictions.

In 2004, Massachusetts enacted the Smart Growth Zoning and Housing Production Act (Chapter 40R). Rather than focus on developers, Chapter 40R encourages cities and towns to create their own additional ordinances for the production of affordable housing. Chapter 40R is the current crisis underscores the continuing and urgent need to address the lack of affordable housing. Could there be further amendments to our housing and economic development policies that would help to address the situation? Perhaps corporate benefactors could help. General Electric will be receiving huge incentives from Boston and the commonwealth to relocate their headquarters here. Maybe they could “spread the love” and use these millions in partnership with Boston and the commonwealth in developing affordable housing. Now we are faced with the reality that fewer and fewer people can afford to buy or rent in Boston and the ‘burbs and many other urban centers across the country. As residential real estate attorneys, we have borne witness to transaction after transaction where sellers have engaged in ‘no-fault’ rent increases from multiple offers over asking price. Oftentimes the offers are cash transactions from well-heeled foreigners looking to put their money in real estate in the U.S. On the flip side, we have sympathized with our buyer clients who have been discouraged after losing bidding war after bidding war, as we have worked with buyers who have lost bids on multiple homes, sometimes over a period of a year or more. The dilemma is that, the longer it takes to enter the market, the tougher entry becomes. In January, Standard & Poor’s issued a report which estimated that home values (in the Boston area) will increase 24 percent by 2020. S&P’s predicts home prices in the Boston area would still actually outpace the increase in magnitude of the economic downturn in 2007.

To make matters worse, being forced to continue to rent puts would be home-owners at a further disadvantage. In the Greater Boston Housing Report Card issued March 31, 2015, Barry Bluestone notes that we are now at the point where it takes an annual income of $100,000 to afford Boston’s median monthly rent. With no foreseeable end to dramatic rises in housing and rent costs, is there any way to address the lack of affordable housing? Inclusionary housing programs may offer some solutions. These programs, as well as cut and run (also known as ‘no-fault’ rent increases), are not new, and have evolved over the years. As M.G.L. c. 40B, R and S. Known as The Comprehensive Peremptory Act, M.G.L. c. 40B was enacted in 1969 to allow developers of affordable housing to override certain municipal zoning bylaws. The goal was to encourage the production of affordable housing by reducing barriers created by local building permit processes, zoning and other restrictions. In 2004, Massachusetts enacted the Smart Growth Zoning and Housing Production Act (Chapter 40R). Rather than focus on developers, Chapter 40R encourages cities and towns to create their own additional ordinances for the production of affordable housing. Chapter 40R is the current crisis underscores the continuing and urgent need to address the lack of affordable housing. Could there be further amendments to our housing and economic development laws that would help to address the situation? Perhaps corporate benefactors could help. General Electric will be receiving huge incentives from Boston and the commonwealth to relocate their headquarters here. Maybe they could “spread the love” and use these millions in partnership with Boston and the commonwealth in developing affordable housing.

In summary, the proposal includes:

• a prohibition on evictions for non-pay ment of rent until a resident is ‘habitually late’
• a limitation and possible prohibition on an owner’s right to occupy his/her own unit for personal use or use by a family member
• a prohibition on evictions for property damage if a tenant agrees to a repairment plan for repairs whether or not the damage is ongoing and causes future repair costs
• a limitation on evictions to those of ‘just cause’ as determined by the city or town
• mandatory mediation with city-selected mediators for all lease expirations, prohibitions on terminations of tenancies and rent increases in excess of 5 percent and
• a provision that market tenants have the right to ignore their lease expiration date and remain in the apartment indefinitely.

As Attorney Jeffrey Turk correctly pointed out at the March 14 hearing, there is no suggestion that a market tenant should be able to remain indefinitely after the expiration of a lease that is due. Currently tenants routinely remain in properties as tenants at will after the expiration of their leases and landlords already face severe penalties for violating these leases.

The process of completing any eviction, especially one falling under the “no-fault” category, already includes ample protection for so-called “vulnerable” tenants. For instance, Chapter 239, Section 8A of the Massachusetts General Laws, allows for a landlord to prove that he or she brought an adverse condition in the property to the attention of the landlord and the condition was neglected and the landlord, either by neglect or by action or omission,相反,在某些情况下,由于没有被告的行为,或在某些情况下,由于没有被告的行为。For instance, Chapter 239, Section 8A of the Massachusetts General Laws, allows for a landlord to prove that he or she

Melanie Hagopian is a real estate and land use lawyer with more than 25 years of experience in the public, corporate and private sectors. Hagopian is vice chair of the MBA’s Real Estate Law Section Council.
When is a Beneficial Interest in a Trust a Marital Asset?

The threshold issue is usually whether a particular beneficial interest in a marital asset, subject to division pursuant to M.G.L. c. 208, § 34. For the most part, this is a relatively well-settled question of construction. A right to legal title provided he survived his father by 21 years, was determined to be a marital asset. The Supreme Judicial Court ruled that where the husband’s interest in the trust property was “present, enforceable and valuable,” his beneficial interest was includable in the marital estate. Many subsequent appellate court decisions involving determination that a trust interest is a marital asset. More recent appellate court decisions have excluded trust interests, but these have generally occurred in circumstances involving contingent beneficial interests, which are devoid of any history of the beneficiary spouse’s receiving payments of income or principal, or trusts that are purely discretionary. In balance, beneficial interests in trusts, whether to direct, limited or conditional, are value are considered marital assets, subject to equitable division in a divorce action.

Only the Beginning

The issues that arise in determining an equitable division of marital property in cases involving trust interests often require a Probate Court to determine that a spouse’s beneficial interest in a trust is a marital asset. Other difficult issues then appear due to the interplay of trust and divorce law. These issues reflect the collision of interests between trust settlors and their beneficiaries, and those of non-beneficiary spouses.

For example, a ruling that a particular beneficial interest in a trust is a marital asset may be of little value to a non-beneficiary spouse if the Probate Court does not also order a distribution of the trust asset to the trustee to issue distributions of income or principal, or to trusts that are purely discretionary. In other words, whether a beneficial interest is a marital asset, and whether a trust is a marital asset, prevents the Probate Court from ordering the trustee to issue distributions to a non-beneficiary spouse, once the asset is included in the estate. In Pfannenstiehl, the Appeals Court did not hold that the trustees of an irrevocable trust can be ordered to make distributions directly to the non-beneficiary spouse. As a result, the conclusion of a trustee will collect her portion of the marital estate, and the husband has argued on appeal that the court’s ruling, in effect, non-beneficiary’s rights. What state law applies to determine the trust interest? Does the non-beneficiary spouse have standing in a divorce action to challenge a trustee, ability of spendthrift provisions in trust interests, other beneficiaries be included as necessary parties in an action to determine the non-beneficiary’s rights? What state law applies to determine the equitable division of trust property? If the court is interpreted under the law of a state other than a spendthrift trust? These issues pit the power of the Probate Court to order equitable divisions of marital property against common law principles, which generally give effect to the intentions of trust settlors and recognize the enforceability of spendthrift provisions. The Probate Court is not bound by traditional concepts of title or property. When the future acquisition of assets is fairly certain, and current valuation possible, the court may consider for assessment under § 34. There are many examples of cases involving beneficial interests in trust assets to be marital assets, subject to equitable division. In the oft-cited case of Lauricella v. Lauricella, a husband’s beneficial interest in a trust, which owned a two-family house that the husband had a vested right to use and a bankruptcy estate includes a debtor’s interest in that portion of a trust, spendthrift or otherwise, that the debtor has an equitable interest in, enforceability of spendthrift provisions. The Probate Court is not bound by traditional concepts of title or property. When the future acquisition of assets is fairly certain, and current valuation possible, the court may consider for assessment under § 34.

The Protection of Vested Interests

Massachusetts law has long considered spendthrift provisions to be valid, whether a beneficiary’s interest in the trust is in the income or the principal. Most arguments against the enforceability of spendthrift provisions in trust interests, other beneficiaries be included as necessary parties in an action to determine the non-beneficiary’s rights? What state law applies to determine the equitable division of trust property? If the court is interpreted under the law of a state other than a spendthrift trust? These issues pit the power of the Probate Court to order equitable divisions of marital property against common law principles, which generally give effect to the intentions of trust settlors and recognize the enforceability of spendthrift provisions. The Probate Court is not bound by traditional concepts of title or property. When the future acquisition of assets is fairly certain, and current valuation possible, the court may consider for assessment under § 34.

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Judicial Interviews

The primary means of eliciting a child’s preference is through some type of examination, including by the judge. However, judicial interviews have drawbacks. Such representation for the child, whether through an attorney, a guardian ad litem (GAL), or combination thereof, Massachusetts courts are of the opinion that the child’s voice is an important factor in any proceeding where the child’s interests are at issue and a child’s averted preference is evidence to be considered in any custody dispute. Massachusetts courts have understandably attempted to balance the desire to protect the child from the stressors of testifying and the parties’ constitutional rights. These decisions are delicate and fact-specific, and there are few concrete rules. The Massachusetts Appeals Court has stated in Anderson v. Raymond that the child’s expression of preference “must be treated with caution,” especially in staunchly contested proceedings.

In divorce and custody proceedings, courts are often saddled with the heavy burden of determining children’s preferences. The preferences and voices of children in Massachusetts courts of the Commonwealth are often engaged to determine whether testimony would be psychologically and emotionally traumatic for the child, the parties stipulated to the interview and its recording, and the questions were based on party submissions. These standards were relaxed in light of the judge’s decision that the interview of the children did not violate their due process rights, and held the opportunity to rebut allegations. Importantly, Massachusetts courts have determined that judicial interviews are not exempt from the requirement that court proceedings must be recorded. In Abbott v. Virrizzo, the Massachusetts Appeals Court, in re Adoption of Harry, reiterated that excluding parents from the child’s interview did not violate their due process rights, and held the opportunity to rebut allegations. In Abbott v. Virrizzo, the Massachusetts Appeals Court, in re Adoption of Harry, reiterated that excluding parents from the child’s interview did not violate their due process rights, and held the opportunity to rebut allegations. In Abbott v. Virrizzo, the Massachusetts Appeals Court, in re Adoption of Harry, reiterated that excluding parents from the child’s interview did not violate their due process rights, and held the opportunity to rebut allegations.
dentify weight if the child is young, although there are no bright-line age guidelines. Ultimately, the weight accorded to a child’s preference is a mat- ter of judicial discretion. For instance, in 1993 the Massachusetts Appeals Court upheld the trial court’s deci- sion in Adoption of Arthur, which gave considerable weight to the 14-year-old child’s stated desire to be adopted after the trial was interviewed by the judge with counsel present. On the other hand, in 1996, the Massachusetts Ap- peals Court ruled in Airds v. Ray- mond that the trial judge accorded too much evidentiary weight to the opin- ions of 11-year-old identical twins. Specifically, the Appeals Court found

**EVICITION Continued from page 26**

the burden of a large scale “affordable housing crisis” that neither they nor their neighbors can manage.

As a part of the “Just Cause” move- ment, tenants are being encouraged by grassroots groups, the Harvard Law School Legal Aid Clinic and the Harvard Project to band to- gether, stop paying rent, demand costly upgrades to apartments and plant signs on lawns and in windows informing the public that the tenants refuse to re- locate. Again, this is largely a reaction to the control of landlords. As financial bur- dens increase (i.e., the cost of main- tenance of their homes), the property owners are faced with the burdensome task of either raising the rent or eliminating the need for the burden. There are important Massachusetts decisions that, for example, address

**NONPROFIT CORPORATION Continued from page 24**

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**DIRECTORS, define duties of manag- ers and create remedies for breach.**

However, we must be mindful of principles and traditions peculiar to nonprofit corporations that have been established in Massachusetts. Many nonprofit corporations operate under organizational documents that are created and modified in procedures that were developed under Chapter 180. It is important to consider the impact of any proposed amendment to the nonprofit corpora- tion statute on existing Massachusetts practices and case law.

The authority of the Office of the Massachusetts Attorney General to protect public charities and address issues in the management of their assets has long been recognized un- der Massachusetts common law and statutory law. M.G.L. c. 12, §§ 8 –

**The authors would like to thank the Administrative Office of the Probate and Family Court of Massachusetts for permission to use research conducted for This Voice of the Child component, which was chaired by the Chief Jus- tice of the Probate and Family Court of Massachusetts; Sara Helmers and Ryan Deck, who were each formerly summer law clerks; and Danielle Starr, who was formerly an associate at Prince Lobel Tye LLP.**

**David G. Tye co-chairs the Domestic Relations Practice Group at Prince Lobel, and Michelle Rothman is an associate at Prince Lobel, specializing in domestic relations. Tye has been guardian ad litem, master, mediator, and arbitrator in contested family law cases, and frequently speaks and writes on family law topics. Rothman is a member of the MBA’s Family Law Section Council.**

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**VOICES OF THE CHILDREN Continued from page 26**

the juror errantly ignored evidence from the children’s GAL and school counselor that the twins should not be separated, instead relying too heavily on individual children’s wishes.

This topic continues to evolve.

In 2012, Massachusetts Gov. De- val Patrick created a Working Group on Child-Centered Family Law, com- prised of representatives from various spheres. The Working Group’s mission was to formulate a comprehensive approach to family law. An evaluation of the child’s voice in the di- vorce process was one of the Working Group’s proposed goals.

The pressure caused by current eco- nomic realities entirely outside the control of landlords. As financial burdens increase (i.e., the cost of main- tenance of their homes), the property owners are faced with the burdensome task of either raising the rent or eliminating the need for the burden. There are important Massachusetts decisions that, for example, address

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Collaborative law: practicing family law with heart

BY JUSTIN KELSEY

In May of 2014, I attended the Massachusett’s Collaborative Law Council’s day long Advanced Training Forum. The attendees included lawyers, coaches, mental health practitioners, financial neutrals and other professionals who help divorcing couples. There were the usual discussions about finding better ways to help our clients divorce, finding more clients, and finding other professionals willing to practice collaboratively. And there was also singing!

I’m breaking a vow we all took, just by telling you that there was singing. But you need to know. Because this is how collaborative law is different. Collaborative law is a team process that uses interest based negotiation to settle cases outside of court. But that technical definition doesn’t really explain the value and influence collaborative law has had on my practice and my clients. Collaborative law has changed how I see conflict, and that has changed how my clients experience their divorces.

The collaborative law training is different. The one thing that still stands out for me from my Collaborative training is not some practice tip or tidbit I learned. I remember most how the trainers genuinely seemed to be friends and I left motivated to be more like them. Honestly, it was not because I really understood how much better collaborative law would be for my clients, but I saw how much better it could be for me. I saw a glimpse of a world in which I could help my clients through their divorce, and still be who I was and who I wanted to be. I didn’t see at first that by changing myself I would also change my clients.

I spent the first five years of my career litigating divorce cases in court. I started out idealistic, wanting to help every client reach their goals and find their peace after the divorce. I asked them what their life looked like a year from now, five years from now, etc. I wanted them to focus on the future. But I started to burn out because many of my clients were not able to reach their goals through the court process and that was frustrating.

The court’s complaint process is set up to protect people and children, and that should be the priority because the people who need protection need the court’s help the most. But for those people who don’t need protection, the court rules and process treat them all the same, as presumed adversaries. The court process and we as practitioners have a significant influence on those undecided or undereducated potential litigants by how we handle our first interactions with them. We are not disconnected observers, and how we measure the conflict between people has an effect on how they choose to resolve that conflict. I call it the “Observer Effect” of family law. It starts with the assumption that most of the people who walk into my office can settle, then I believe most of those people will never go to trial without the need for the cost and pain of adversarial litigation. But if I start with the assumption, as the complaint process does, that most of the people who are starting a divorce are adversarial, then I believe most of those people will end up acting that way.

Collaborative law is a different experience for my clients. If my divorcing clients finish their case having no better idea how to deal with conflict than when they first came into my office, then I have failed them. Divorce is a by-product of conflict in the marriage, but if people are ending their marriage to escape that conflict, why do so many couples end up in long drawn out court fights for years, essentially continuing that conflict? Because somewhere along the line the complaint style system has failed them.

Collaborative law teaches us how to transform that conflict using the support of a team and proven techniques for reducing and resolving disputes. That is not easy. In fact, in many ways it is easier to just try and beat each other in court than to actively listen and work together. Traditional negotiation and litigation only requires you to define what your client wants as an endpoint and then try to get it. It ignores the relationship the two parties have. Collaborative law uses an interest based negotiation approach to understand what both parties’ goals and interests are. By knowing what lies beneath each person’s wants we are better able to negotiate a mutually satisfying result and capture.

Collaborative law is different because we accept that the conflict is a part of life and we don’t fight that fact. Instead we use the energy of that conflict to help both sides understand their needs and wants better. I recently read a blog post by a Collaborative Attorney in Florida whose partners had to ask him to quiet down because the divorcing clients in his Collaborative settlement meeting were laughing too loudly. Collaborative law brings back into the room the human dignity our clients deserve and the comfort that gives them permission to laugh when life is funny. We even find ways to sing about it.

Collaborative law has changed how I see conflict, and that has changed how my clients experience their divorce, and therefore how they experience their life after divorce. The theme of the MCLC Advanced Forum from May 2014 was Mindfulness. It is impossible to be more aware, more mindful of how you do something and not have that carry over into other parts of your life. Collaborative law is not just different, it is better for everyone involved and it changes them.

If you’re reading this and you have worked within the collaborative law community then you already understand what I am talking about. If you’re reading this and it is the first time you’ve heard about collaborative law, you might be wondering what we’re thinking. I’m not asking you to buy it right away. Just give it a chance and maybe it will change you too.

Thank you to the great speakers from MCLC’s program and specifically David Hoffman of the Boston Law Collaborative for teaching us how being more positive will change the people around us (and for teaching the singing). If you’re interested in learning more, check out MassCLC.org for information on the next collaborative law training coming up in September 2016.

By Lisa G. Kent

“All happy families are alike; each unhappy family is unhappy in its own way.” — Leo Tolstoy, “Anna Karenina”

The proponents of Senate No. 834, “An Act Relative to Child Centered Family Law” could shake the foundations of Massachusetts family law

BY LISA G. KENT

“"All happy families are alike; each unhappy family is unhappy in its own way." — Leo Tolstoy, “Anna Karenina”

The proponents of Senate No. 834, “An Act Relative to Child Centered Family Law” could shake the foundations of Massachusetts family law. If SB.834 passes in its current form, how will it change the practice of family law? Will it change how we advise clients about custody? How will it impact the settlement of cases? Will it affect the cost and means of litigation? Will it benefit certain types of clients over others?

To explore these questions, I made a presentation about SB.834 to a small group of busy family lawyers from my county bar association — a wonderfully collegial group. We brainstormed how the law could change our practices. Here are the results of this “focus group,” along with a few observations of my own:

First of all, “happiness” to mandatory factors: We began by reviewing the underlying principles of the current custody law. M.G.L. c. 208, § 31.1 There’s no presumption about shared physical or legal custody, except where there is proven abuse (as provided in section 1A). Rules. Section 31 seems a tad quaint in basing custody decisions on “the happiness and welfare” of children. With typical lawyers’ irony, sarcasm, several of my colleagues observed that the bill seemed to be another out-of-touch effort by legislators and interest groups to tell practicing lawyers how to negotiate for the “happiness” for our clients’ children.
One attorney asked why we needed a new law to tell us what was in a child’s best interest. Here were some thoughts:

Perhaps “happiness,” being subjective, has outlived its usefulness as a yardstick. In an age where there can be two capable parents, a child can be “happy” in both households. We need guidelines by which to choose one parent over another.

Underfunded and understaffed courts, inundated with unrepresented litigants, need speedily resolutions, especially at the temporary order stage. It’s easier for a court to use a checklist when it has little to no time to hear nuanced matters or take evidence.

On the other hand, specific criteria could help anchor clients with objective criteria by which they’ll be judged. This helps to make custody decisions more predictable, and cases more likely to settle.

The “right to parent” contends with the “best interest” standard. The keystone of SB.834 is this: “In this section, “Each parent has a right to parent his or her child, absent any limiting factor the court finds necessary for the maximization of each child’s best interest.”

What, exactly, does this mean? One interpretation of this sentence is that it creates an “equitable division of custody” — meaning that, first, there’s a “right to parent,” second, consider limiting factors (i.e., domestic violence); and, lastly, a reflection on what is in the child’s best interest as a whole. Or does it create a balancing test (right to parent vs. limiting factors) that is then subject to the court’s own ideas about best interest? How does this make the law clearer? And, as an astute attorney noted, even though there’s a “right to parent,” does any child have any rights to remain together? Under SB.834, no.

New names, no problem; but a parenting time presumption? No one was surprised that the term “physical custody” was replaced by “residential responsibility.” Swapping out the term “decision-making responsibility” for “legal custody” was even more troubling. It led to the presumption of one-third or more parenting time per parent raised eyebrows. “This is being done to align parenting time with what we support, instead of resolving the custody,” one attorney stated. Child support payors will benefit from a new parenting time “floor,” from which to negotiate. Parties will negotiate the “best interest” standard and decide on a much lower “playing field.”

This “new tilt” to the custodial playing field could make negotiations more efficient. However, these factors are permissive, not mandatory. If we’re requiring courts to factor in parenting attributes, why not require them to factor negative parenting attributes as well? One wonders what the reason is behind this significant omission.

The requirement of detailed parenting plans for temporary orders and separation agreements had us all thinking about the extra work needed. In addition to where a child will be every day and night, we now must now include in parental plans, among other things; the child’s school district, his or her extracurricular activities, transport and exchange of the child’s change for making periodic changes to the schedule; information sharing and access. We’re all confused (Be careful What you Wish For).

The “right to parent” contends with the “best interest” standard: The keystone of Massachusetts divorce, a beneficiary spouse’s trust funds. While this awareness could help anchor clients with objective evidence. It’s easier for a court to use a checklist when it has little to no time to hear nuanced matters or take evidence.

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Consideration of divorce cases involving trust disputes are becoming more prevalent. The Supreme Judicial Court’s decision in the Pfannenstiel appeal will likely clarify the extent to which a beneficial interest in a trust may include a material asset for purposes of calculating an equitable distribution. Beyond Pfannenstiel, however, family law practitioners should be aware of the strong protections Massachusetts has enacted that can and often are used to thwart the Probate Court’s enforcement of child and spousal support and maintenance orders and equitable property divisions. Practitioners should also be aware that many other states have enacted exceptions to the enforceability of spendthrift provisions, which provide non-beneficiary spouses and children greater rights to receive a beneficiary spouse’s trust funds. Whether a court may not resolve the Pfannenstiel family feud, it may shine light on others.

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Pfannenstiel

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Announcements

NORFOLK
Heidi A. Nadel and Darren P. Cross have partnered to form Cross Nadel LLC, a Metro South boutique law firm located in the historical Willard Building in Quincy. The firm provides premier legal services to individuals and businesses with a focus on litigation, appeals, bankruptcy, immigration and trademark and copyright registrations.

SUFFOLK
Doreen M. Zankowski has joined Duane Morris LLP as a partner. Zankowski will enhance the firm’s construction law and litigation capabilities in Boston, nationally and internationally.

Peter Foundas has joined the Boston office of Robins Kaplan LLP as an associate. Foundas’ practice focuses on general liability, professional malpractice, product liability, construction litigation and commercial disputes.

Denotes: MBA Honor Roll Firm

In Memoriam

Hon. Judge Beverly W. Boorstein (ret.)
Retired Probate & Family Court Judge Beverly W. Boorstein passed away in April. Boorstein was a judge from 1992 until her retirement in 2007. After leaving the bench, she opened a dispute resolution practice in Newton. Boorstein graduated from Brandeis University in 1961 and Boston University Law School in 1964, the same year she was admitted to the bar. From 1979 to 1985, she was co-partner in a firm with another future judge, Suzanne V. DelVecchio.

MBA Past President Roy A. Hammer
It is with great sorrow that we share the news that Massachusetts Bar Association Past President Roy A. Hammer (1978-79) died in late April at the age of 81. He had been of counsel to the Boston law firm Heminenway & Barnes LLP. An MBA Gold Medal Winner (1985), Hammer was active with the MBA for many years, as well as a past president of the Massachusetts Bar Foundation (MBF), the MBA’s philanthropic partner. In 2014, the MBF presented Hammer with its President’s Award at its 50th Anniversary Gala, noting his leadership in committing the MBF to be a core funder of the Flaschner Judicial Institute.

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