State Representative Claire D. Cronin, a Democrat representing the 11th Plymouth District, is the new House chair of the Joint Committee on the Judiciary, after her appointment this term by House Speaker Robert A. DeLeo. Her new role is a prestigious leadership position that is of vital importance to the bench and bar. Cronin was first elected to the Massachusetts House of Representatives for the 11th Plymouth District, which includes both Brockton and Easton, on Nov. 6, 2012.

Cronin began her career at Wynn and Wynn PC in Raynham, and she went on to maintain a sole practice in Brockton up until the time she was sworn in as a member of the House of Representatives. She has been affiliated with Commonwealth Mediation since 2002, where she has arbitrated and mediated cases involving a wide range of issues, most notably the landmark settlement of the Massachusetts clergy sexual abuse cases.

“Representative Cronin brings a wealth of legal experience to her new leadership role, including more than a decade of working as a mediator and arbitrator,” said MBA Chief Legal Counsel Martin W. Healy. “In fact, her work as a neutral on emotionally charged and complex issues offers a glimpse at what may be her most valuable skill — the ability to bring people to a consensus.”

Cronin previously served as vice chair of the Joint Committee on the Judiciary where she worked on key legislation in the committee, including family law, civil rights issues and legislation criminalizing the trafficking of Fentanyl. Cronin also served on the Joint Committee on Ways and Means, the Joint Committee on Telecommunications, Utilities and Energy, the House Committee on Post Audit and Oversight, the Joint Committee on Economic Development and Emerging Technology, and the Joint Committee on Veterans and Federal Affairs.

Well-regarded by the bar, Cronin earned the 2016 MATA Legislative Leadership award from the Massachusetts Academy of Trial Attorneys. In 2015, she received the Beacon of Justice Award from the Equal Justice Coalition for her support of legal aid.

“Her work on behalf of those most in need of legal services was, and is, exemplary,” said John Carroll, who was chair of the EJC in 2015 and presented Cronin with her award. “Now she is about to assume the weighty responsibilities of House Chairperson of the Joint Committee on the Judiciary. She has the two most important virtues we, as citizens, could hope for in that position: fairness and compassion. Representative Cronin is the embodiment of those two virtues. Combined with her capacity for hard work, the House would be hard pressed to find a better choice.”
Housing Court: Where everyone benefits

I was recently invited to attend Housing Court in Boston by Chief Justice Tim Sullivan and in Springfield by Judge Dina Fein. I wanted to learn firsthand how Housing Court works and its importance to the populations it serves. My main takeaway: Everyone benefits from these courts.

In general, these courts, their judges and their staff serve vital roles in providing tenants with a fair and efficient process, while also helping landlords to maintain viable rental income. Through code enforcement and receiverships, they also revitalize properties and thereby increase tax revenues to municipalities.

In both Housing Courts, I sat in on mediation with a housing specialist. She assisted an unrepresented tenant and landlord. The tenant, a Jamaican woman, was being confronted with the heart-breaking reality that a better life for herself and her son in America has disrupted. Through tears, she said she lost her job and was ashamed of not being able to pay her rent for a few months to someone whom she considered a “good landlord.” However, she found another job and now had money to pay the back and future rent to keep the tenancy.

In conclusion, my experience confirmed that the Housing Court should be expanded to the entire state. Currently, 31 percent of the population, many living in parts of Suffolk, Middlesex and Norfolk counties, do not have access to them. There is an abundance of indisputable facts that confirm that the Housing Court has proven to be very successful and profitable. Although there is a widespread perception that these courts serve primarily tenants, I put forth the following facts that confirm that the Housing Court has proven to be very successful and profitable.

I next went to Western Housing Court in Springfield and observed Judge Fein handle a code enforcement case where the city was frustrated with the landlord’s failure to make the repairs. The judge directed the landlord to pay back the cash for back rent due, while giving her more time to find another place. The landlord left with the cash for back rent due, while giving her more time to find another place.

For the Massachusetts Bar Association

Jeffrey N. Catalano

Young Lawyers at the Celtics

The Massachusetts Bar Association’s Young Lawyers Division hosted a Celtics Night on Feb. 15. The Celtics defeated the Philadelphia 76ers, 116-108, at the TD Garden.
CALENDAR OF EVENTS

FOR MORE INFORMATION, VISIT MASSBAR.ORG/EVENTS/CALENDAR

April
Tuesday, April 4
Member Appreciation Trivia Night 6-8 p.m.
MBA, 20 West St., Boston

Tuesday, April 4
Nuts and Bolts of Workers’ Compensation 3:30-5:30 p.m.
MBA, 20 West St., Boston

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

Thursday, April 6
Second Annual Complex Commercial Litigation Conference 1-5 p.m.
Hyatt Regency Boston, 1 Avenue de Lafayette, Boston

Thursday, April 6
How to Work a Room 4-5:30 p.m.
MBA, 20 West St., Boston

Thursday, April 6
MBA Member Appreciation Reception 5:30-7:30 p.m.
MBA, 20 West St., Boston

Friday, April 7
2017 Annual Health Law Symposium 9 a.m.-2 p.m.
MBA, 20 West St., Boston

Friday, April 7
Inaugural Juvenile and Child Welfare Conference: Gault at 50, the Living Legacy 10 a.m.-5 p.m.
UTEC Center, 35 Warren St., Lowell

Tuesday, April 11
Estate Planning 101 Series Part II: How to Probate an Estate 5-7 p.m.
MBA, 20 West St., Boston

Wednesday, April 12
MBA, 20 West St., Boston

Thursday, April 13
Probate Litigation: Obtaining Attorneys’ Fees and Costs 4-7 p.m.
MBA, 20 West St., Boston

Tuesday, April 18
Mediation & Arbitration Essentials: Part III Noon-1:30 p.m.
MBA, 20 West St., Boston

Monday, April 24
Arbitration: Spotlight on Evidence 5-6:30 p.m.
MBA, 20 West St., Boston

Wednesday, April 26
Where Divorce, Valuation and Asset Division Meet Atypical Assets 4-6 p.m.
MBA, 20 West St., Boston

Thursday, April 27
Lifestyle of a Business Part II: Cybersecurity 8:30-10:30 a.m.
MBA, 20 West St., Boston

Thursday, April 27
Navigating Unconscious Bias: Potential Impact and Real World Strategy 4:30-6:30 p.m.
MBA, 20 West St., Boston

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

Thursday, May 4
2017 MBA Annual Dinner 5:30-9 p.m.
The Westin Boston Waterfront, 425 Summer St., Boston

Thursday, May 11
Practicing with Professionalism 8:30-4:30 p.m.
College of The Holy Cross, 1 College St., Worcester

Tuesday, May 16
Affordable Housing Law and Policy: Tax, Financing, Development and Access to Justice Perspectives 3-6 p.m.
MBA, 20 West St., Boston

Thursday, May 18
MBA House of Delegates Meeting 4:6 p.m.
MBA, 20 West St., Boston

Friday, May 19
Inaugural Dispute Resolution Symposium 8-4 p.m.
University of Massachusetts Boston, Campus Center, 100 Morrissey Blvd., Boston

Tuesday, May 23
How to Become a Mediator: Incorporating Mediation into Your Law Practice 4:30-6 p.m.
MBA, 20 West St., Boston

Thursday, May 25
Rising Above: Breaking the Glass Ceiling in Domestic Relations Practice 4:30-6 p.m.
MBA, 20 West St., Boston

Wednesday, May 31
Equity Actions: Determining Ownership Recovery of Assets 4-6:30 p.m.
MBA, 20 West St., Boston

Payment Processing, EXCLUSIVELY FOR ATTORNEYS.

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

Helping law firms get paid.

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

www.LawPay.com/massbar | 866.376.0950

LawPay®
CREDIT CARD PROCESSING

REAL-TIME WEBCAST AVAILABLE FOR PURCHASE THROUGH MBA ON DEMAND AT WWW.MASSBAR.ORG/ONDEMAND

INDICATES RECORDED SESSION AVAILABLE FOR PURCHASE AFTER LIVE PROGRAM THROUGH MBA ON DEMAND AT WWW.MASSBAR.ORG/ONDEMAND.
The Supreme Judicial Court and its Executive Committee on Massachusetts Evidence Law recently announced the release of the 2017 edition of the Massachusetts Guide to Evidence. The justices of the Supreme Judicial Court recommend use of the guide by the bench, bar and public.

“The Executive Committee has updated and expanded the Massachusetts Guide to Evidence to reflect new legal developments, and I am most appreciative of their excellent work,” Supreme Judicial Court Chief Justice Ralph D. Gants said. “The Guide is an invaluable practical research tool and important resource for understanding Massachusetts evidence law. Attorneys, judges, and self-represented litigants rely on the Guide daily in courts throughout the Commonwealth.”

The 2017 edition is the ninth annual edition of the Guide. An electronic version is available without charge on the court’s website, where it can be searched and downloaded. The Official Print Edition of the Guide is available from the Flaschner Judicial Council’s website, where it can be searched and downloaded. The Official Print Edition of the Guide reflects developments in Massachusetts evidence law that occurred between January 1, 2016 and December 31, 2016. In addition to incorporating dozens of new opinions issued in 2016 by the Supreme Judicial Court and the Appeals Court, the 2017 edition contains substantial revisions, including: (1) addition to Section 102 of different types of cases where the new abuse of discretion standard has been used; (2) changes to Section 103 (Rulings on Evidence, Objections, and Offers of Proof) to reflect changes in the requirement that a party objecting to a ruling on a pretrial motion in limine must restate the objection at trial; (3) a new addition to the Note to Section 403 addressing cases involving evidence of similar occurrences; (4) an overhaul of Section 1114 (Restriction); and (5) a new Section 1116 on the use of, and objections to, peremptory challenges of potential jurors.

In 2006, the Supreme Judicial Court established the Advisory Committee to prepare a Massachusetts Guide to Evidence at the request of the Massachusetts Bar Association, the Boston Bar Association, and the Massachusetts Academy of Trial Attorneys. In 2008, the Supreme Judicial Court appointed the Executive Committee of the Advisory Committee on Massachusetts Evidence Law to monitor and incorporate new legal developments and produce annual new editions of the Guide: Appeals Court Judge Peter Agnes chairs the Executive Committee and is the editor-in-chief of the Guide. The other members of the Executive Committee are: Attorney Elizabeth N. Malvey (editor); Hon. Mark S. Coven (editor); Clerk of the Appeals Court Joseph F. Stanton (reporter); Hon. Stephen M. Limon; Hon. Barbara Hyland; Supreme Judicial Court Secretary Attorney A.W. “Chip” Phinney, New England Law Boston Professor Philip K. Hamilton; Boston University School of Law Professor Mark Pettit; Benjamin K. Golden, Esq.; Edmund P. Daley III, Esq.; Appeals Court Law Clerk Anthony Podes-ta, Esq.; and Supreme Judicial Court Justice David A. Lowe, who has been a member of the Committee since its inception, and now serves as a consulting member.

State leaders release report on criminal justice reform measures

Governor Charlie Baker, Senate President Stan Rosenberg, House Speaker Robert DeLeo, and Supreme Judicial Court Chief Justice Ralph Gants, along with the Council of State Governments (CSG) Justice Center released a report on Feb 21 which, along with related legislation, outlines ways in which Massachusetts can enhance public safety, avoid nearly $10 million in projected corrections costs by 2023 and accelerate further reduction of its incarcerated population. Compared to other states, Massachusetts has a relatively low overall incarceration rate. However, there remains room for improvement. Two-thirds of those released from Houses of Correction and more than half of those released from the Department of Correction recidivate within three years. With corrections spending over a billion dollars per year the Governor, the Speaker, the Senate President, and the Chief Justice of the Supreme Judicial Court requested that the Council of State Governments Justice Center conduct a data driven analysis to assist in the development of recommendations to reduce recidivism, improve public safety and generate savings.

A bipartisan, inter-branch steering committee and working group were established to support this work. Between January 2016 and January 2017, the 25-member working group met six times, and its five-member steering committee met seven times to review analyses conducted by the CSG Justice Center and discuss policy options. In assisting the working group and steering committee, CSG Justice Center staff analyzed more than 13 million state records, conducted more than 300 in-person meetings, and helped craft research-backed policy options to address the state’s criminal justice system challenges. To that end, policy options outlined in the CSG Justice Center’s report reflect a three-pronged strategy including legisla-tive, administrative and budgetary actions that each branch of government will take to help reduce recidivism within the commonwealth. These actions will incentivize participation and expand access to pre- and post-release programming.
It is no secret that law school is a difficult and competitive journey. Students must work hard and persevere to get ahead, and there are many resources on the internet for tips on how to succeed while in school. Where do performance- enhancing drugs come into play? Adderall (amphetamine), Ritalin (methylphenidate) and Vyvanse (lisdexamfetamine dimeylate) are stimulants prescribed to those diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). These stimulants are taken to improve cognitive function, including focus, concentration, and attention. However, these medications can be abused as the ability to focus, hyperactivity and impulsivity. Side effects include bladder pain, bloody or cloudy urine, lower back or side pain, appetite loss, dizziness, and more. Another problem with the use of these drugs is the possibility of addiction. Tolerance can quickly build, which leads to a dangerous path of abuse.

Today, many students who have not been diagnosed with ADHD take stimulants, such as Adderall, to improve their study capacity, especially around finals time. Finals time is likely the most stressful time in our law school life, given that most grades hinge on the performance of one final exam. Interestingly enough, there has been research that shows confidence in these types of stimulant drugs are possibly misplaced. Adderall may help with improvement among lower performing law students, but a quick search leads to many forums where law students are inquiring about its use in studying.

If you or anyone you know has a potential problem with Adderall or other stimulants, please do not hesitate to contact your school’s counseling center. They are there to help.
Q. What are the most important issues facing the Judiciary Committee this session?

We receive close to 1,000 bills on a wide range of complex issues, so we are dealing with issues from criminal justice to constitutional issues, privacy issues, real estate issues, criminal procedure, civil procedure — the list goes on and on. Once we get all of the bills from the Clerk’s office we’ll be able to get a better sense of what appears to be some of the most pressing issues. I anticipate that criminal justice reform will be a hot topic this session. There’s been a lot of discussion in that regard, certainly.

Q. A proposal related to shared custody that was followed closely by the family law bar stalled last year. What is the future of the shared-custody proposal?

It’s very complex. We were working on the bill in the House last year but it didn’t go through in the Senate. This session bills have been filed that directly relate to custody issues and shared parenting. We will continue to vet and review them. The issue is coming back, that’s for sure.

Q. Where would you like to see it end up?

As with any piece of legislation, we are always seeking to build consensus around the issues. Last session we made significant progress, but the ball wasn’t pushed over the finish line. This year I’d look to build on the progress we made last year and continue the conversation.

Q. Gov. Baker has filed a criminal justice reform bill following the report from the Council of State Governments. What’s the next step?

There was a working group that worked with the Council on State Government, and I appreciate the really hard work they did, along with CSG and the co-chairs. The previous Judiciary Chair, John Fernandes, did a fantastic job on that working group. The working group released a report based on the findings of the working group, and Governor Baker filed the bill. It will basically go through the legislative process the same as all the other bills. I expect that we’ll be having a public hearing on it in the not too far future.

Q. What is your position on mandatory minimum sentences?

That’s broad, but I try to approach every issue with an open mind, that’s the mediator in me. We’re likely to have numerous bills on the issue around mandatory minimums, and the CSG legislation touches on that, as well. All of these bills will have public hearings, and I’m looking forward to hearing from all sides, and examining the issue in deep. This issue is a little more complex than most people think. When we talk about mandatory minimums we’re talking about mandatory minimums with regard to a range of offenses, from murder to guns to drug trafficking, so it’s not one size fits all. It’s very complex, and it will require significant, thoughtful analysis.

Q. What role do you see the Judiciary Committee having with regard to the rollout of the new marijuana laws in Massachusetts?

That will be interesting. This year a new Committee on Marijuana Policy was created. It is being chaired by Rep. Mark Cusack in the House. The committee will probably be addressing concerns of public safety, consumer protection and taxation among other things. Rep. Cusack will do a great job on that. Along with that, I believe our committees will probably intersect around issues such as operating under the influence of marijuana. We really don’t have standards in place for that, so I imagine we will be working together on some of these issues after the Policy Committee completes their work.

Q. How did you get into arbitration and mediation?

It started out with my background as a litigator. I had experience on both sides of the bar — both plaintiffs’ and defense bar. Originally I had taken a little time off to stay at home raising my children, and it was a wonderful way to get back into the workforce with family friendly hours, and my experience provided me pretty good training. I work with Commonwealth Mediation, one of the leaders in the mediation-arbitration world.

Q. Do you still maintain an active arbitration/mediation practice?

I handle a few cases a month, but it’s very limited at this point because I’m devoting myself fully to being a state representative. I will probably do fewer now as chair of the Judiciary. I think my time constraints will be many right now, so I imagine my mediation-arbitration practice will take a back seat.

Q. Does your background as a neutral help you in your role as a legislator?

Absolutely. As a matter of fact, when I ran for office that was more or less one of the issues I ran on. As a mediator, you must be able to look at all sides of an issue. You can’t go in with a set-in-stone opinion that doesn’t waiver. One learns how to bring people of various opinions and biases together, and you really learn the art of compromise. Those same skills have prepared me well to serve in the Legislature.

Q. Why did you decide to run for public office?

I grew up in a family that valued public service. A strange tidbit that most people would be surprised to hear is I’m the third generation in my family to serve in the Massachusetts House of Representatives. My mother’s uncle served in the 1920s. My brother’s brother served in the 1940s, and went on to become the mayor of Brockton. I was elected in 2012, as the third generation, I grew up recognizing that there was strong duty to give back to your community. Before I ran for office, my volunteer work in the community was rooted in public service. I served on the Old Colony YMCA board for 12 years. I served on the Foundation for Excellence in Education in Easton. I just grew up with public service always in the back of my mind. As my children got older, the seat that I ran for, the 11th Plymouth District, was vacated by a longtime state rep, Geri Creedon, so it was an open seat. I’ve always had a strong interest in politics. I was a political science major in college, and there’s always an intersection with law and politics, as well. Many years ago I worked in the State House as an intern in the House of Representatives, and I went on to become a staff member of Governor King in 1982, so the interest was always there and the timing was right.

Q. What do you find most challenging about being a state representative?

The most challenging part is something that many people deal with: time management. I think that there just isn’t enough time in the day to do all that you want to do.

Q. What do you find most rewarding?

The first thing — and I could never properly articulate this when I was running for office — but deep down I like to help people. And every day I have an opportunity to do that. I love that about the job.

Website offers attorneys an online pro bono opportunity

BY MIKE VIGNEUX

A new legal advice website, Mass Legal Answers Online (www.masslaw.org), provides attorneys with a convenient and easy way to provide pro bono assistance to low-income populations.

Individuals who are deemed income-eligible can register on the site and post a question on any civil legal matter. Participating attorneys log in and provide answers to the posted questions on a pro bono basis.

Launched in November, the site is part of the American Bar Association’s Free Legal Answers project, a national effort to provide online legal assistance to some of the most vulnerable populations. First piloted in Tennessee in 2011, the project is open to any ABA jurist. The ABA provides technical support for the national network of sites in addition to malpractice insurance.

More than 500 clients have created accounts on the site in Massachusetts, and more than 130 attorneys have signed up to answer questions. The local site is managed by the Massachusetts Law Reform Initiative (MLRI) and includes the participation of the Massachusetts Bar Foundation.

The MBA, which has signed up to answer questions. The local site is managed by the Massachusetts Law Reform Initiative (MLRI) and includes the participation of the Massachusetts Bar Foundation.

The MBA, which has signed up to answer questions, one of the main referral sources is the MBA’s Lawyer Referral Service. “The Mass. Bar [Association] has been an integral part of making this a successful project,” said Rochelle Hahn, co-director of the Massachusetts Legal Websites Project at MLRI. “The site allows attorneys from everywhere in the state to help clients from everywhere in the state.”

Mass Legal Answers Online has been endorsed by the state’s Access to Justice Commission and the Supreme Judicial Court’s Committee on Pro Bono.

Participating attorneys can decide what questions to answer and when to answer them based on their schedule, and they can sign up to follow questions on a particular area of law. MBA members can volunteer for this pro bono project by signing up at www.masslaw.org, or sending an email to info@masslaw.org.

The greatest need is for attorneys with experience in family law, housing rights and debt collection. “People are often so overwhelmed by legal issues, they don’t even know where to start,” said Hahn. “Just a few minutes of an attorney’s time can really make a big difference.”
Celebrating you and our community

I recently shared and applauded some of the great things you, our invaluable network of members, have done for the community-at-large through our holiday food drives, clothing drives, blood drives and more. While certainly impressive, I am excited to share and applaud the equally great things you have done and continue to do for our very own MBA community by volunteering countless hours to share your knowledge and expertise with fellow members.

As a statewide bar association, we strive to keep you informed of the “latest and the greatest” in the law, and provide you with an opportunity to build a network of colleagues throughout the commonwealth through our many resources, including numerous face-to-face interactions, as well as through our virtual community My Bar Access.

With members across the four corners of the state, we realize how important and valuable this online connection is, especially for our solo and small firm members, and appreciate your active participation to help keep our forums active, vibrant and useful to our members. Thanks to you, My Bar Access blogs have been viewed more than 13,800 times and there have been more than 6,300 eGroup posts since September.

In addition to acting as a sounding board through My Bar Access, members are helping members every day by offering guidance through mentoring, sharing knowledge through continuing legal education programs, clarifying legal issues through timely articles, offering constructive feedback through mock interviews, providing direction in response to ethical inquiries and fee disputes, recognizing and celebrating achievements of colleagues, and, yes, even sharing in disappointments and offering words of encouragement.

All of these efforts by you have contributed to our supportive community, which is undoubtedly one of our greatest benefits. For these reasons and more, we celebrate you, our invaluable members, during Member Appreciation Week and throughout the year.

Member Appreciation Week: April 3–7

All week — enter to win prizes

• MONDAY, APRIL 3:
Win one free dinner pass to the MBA’s Annual Dinner on May 4, featuring a keynote by award-winning CNN senior analyst and best-selling author Jeffrey Toobin.

• TUESDAY, APRIL 4:
Attend Trivia Night. Plus, enter an online raffle to win a $150 AMEX gift card.

• WEDNESDAY, APRIL 5:
Win a FREE conference of your choice.

• THURSDAY, APRIL 6:
Attend our FREE session on “How to Work a Room” followed by our annual Member Appreciation Week reception!

How to Work a Room
Thursday, April 6, 4–5:30 p.m.
MBA, 20 West St., Boston
Knowing how to “work the room” can make the difference between a mere exchange of business cards and an exhilarating event that expands your circle. Learn the steps to take before, during and after a networking event to ensure you get the most out of face-to-face interactions.
R.S.V.P. at MassBar.org/WorkARoom

Member Appreciation Week Reception
Thursday, April 6, 5:30–7:30 p.m.
MBA, 20 West St., Boston
Complimentary wine, beer and hors d’oeuvres
R.S.V.P. at MassBar.org/Appreciation

• FRIDAY, APRIL 7:
Win a Free MBA membership plus free LRS membership for the 2017–18 year.

TO ENTER, EMAIL: PRIZE@MASSBAR.ORG.
Hundreds gather at Annual ‘Walk to the Hill’

Hundreds of attorneys participated in the 18th Annual Walk to the Hill for Civil Legal Aid to advocate for increased funding for civil legal services throughout the commonwealth.

On Thursday, Jan. 26, the Massachusetts Bar Association co-sponsored the 18th Annual Walk to the Hill for Civil Legal Aid to advocate for increased funding for civil legal services throughout the commonwealth.

According to BBA’s Investing In Justice report, 64% of qualified applicants must be turned away by legal-services providers in Massachusetts due to lack of funding, and Rep. Kennedy regularly cites both that figure and the corresponding national estimate of 80 percent.

“The work in Congress to ensure access to justice will continue,” he said. “We will be here again next year. We will be here in the months ahead to keep advocating for more funding. The MBA to keep advocating for more funding.

“Now we have this incredible honor in Massachusetts recognized by the ABA for his inspiring leadership and commitment to equal justice for all."

In addition to Rep. Kennedy, the ABA will also honor Senator Mazie Hirono (D-HI), Senator Richard Shelby (R-AL) and Representative Mac Thornberry (R-TX).

Congressman Kennedy to receive 2017 Justice Award from American Bar Association

Representative Joseph Kennedy (Massachusetts - 4th) will receive the American Bar Association (ABA) Justice Award for his work in Congress to ensure access to justice. He will receive the honor during the ABA Awards Dinner at the Women’s Museum in Washington on April 25th.

Congressman Kennedy was nominated for the award by the Massachusetts Bar Association (MBA) and the Boston Bar Association (BBA) in recognition of his strong advocacy and support for the civil justice system and his efforts to eliminate discrimination.

At the federal level, Kennedy has been a leading advocate for appropriate appropriations to the Legal Services Corporation, to help meet the tremendous unmet need for legal representation of the indigent across the nation.

According to BBA’s Investing In Justice report, 64% of qualified applicants must be turned away by legal-services providers in Massachusetts for lack of funding, and Rep. Kennedy regularly cites both that figure and the corresponding national estimate of 80 percent.

“From his work as a volunteer legal aid attorney to his nationwide advocacy for legal aid support, Congressman Kennedy has been a champion for the people in our communities who need it most,” said MBA President Jeffrey N. Catalano.

“We are incredibly proud to see such a distinguished son of Massachusetts recognized by the ABA for his inspiring leadership and commitment to equal justice for all.”

In addition to being one of the leading voices on Capitol Hill for access to justice, Rep. Kennedy has also been outspoken on the elimination of discrimination,” said BBA President Carol Starkey of Conn.

“The background, the commitment, and the passion that Rep. Kennedy brings to these vitally important issues make him especially suited for the ABA’s Justice Award.”


Speaking at the White House this past spring, he told an audience of administration officials, state Supreme Court justices, civil legal aid advocates and Fortune 500 leaders — “Our justice system — both civil and criminal — is our nation’s ultimate equalizer where money and power should hold no influence. But for our most vulnerable citizens, lack of access to civil legal aid has denied true access to the laws intended to guarantee them justice. That’s why it’s time to reverse the trend of dangerous cuts to legal aid programs and make good on the promise of equal justice under the law.”

He also introduced the Do No Harm Act to help restore the delicate balance between religious liberty and equal protection. In an opinion piece on the Huffington Post co-authored with a House colleague, he wrote: “As men of faith, the ability to freely and fully exercise sincerely-held religious beliefs in this country is a liberty we cherish. But there is a difference between exercising religious beliefs and imposing them on others. Our Constitution fiercely protects the former and expressively prohibits the latter. The Do No Harm Act reestablishes that fundamental distinction and confirms what generations of civic history, constitutional law and American experience have proved true: if civil and legal rights exist only in the absence of a neighbor’s religious objection, then they are not rights but empty promises.”

In addition to Congressman Kennedy, the ABA will also honor Senator Mazie K. Hirono (D-HI), Senator Richard Shelby (R-AL) and Representative Mac Thornberry (R-TX).
Faculty Spotlight

Name: Meghan Slack
Firm: Law Office of Meghan Slack
Program Chair: Navigating Unconscious Bias: Potential Impact and Real World Strategy

Meghan Slack is a solo practitioner in Arlington and focuses her practice on employment law. Slack counsels workers and small business owners in a variety of employment matters. She is vice chair of the MBA’s Labor & Employment Section Council and secretary of the MBA’s Young Lawyers Division. She graduated summa cum laude from Suffolk University Law School and earned a Master of Public Administration from Suffolk University in 2010. Prior to graduating from law school, Slack worked as a law clerk at the Equal Employment Opportunity Commission and interned at the United States Senate Committee on Health, Education, Labor and Pensions. She volunteers with the Military Friends Foundation, a Massachusetts charity that serves military families throughout the commonwealth.

UPCOMING MBA CLE

WEDNESDAY APR. 12
Let’s Do Lunch: LPM’s Guide to the Legal Galaxy — Using Video Marketing to Attract More Clients
12:30–2 p.m., MBA, 20 West St., Boston
Faculty: Erica Moreno, Esq., program chair; Travis Jacobs, Esq.

THURSDAY APR. 13
Probate Litigation
4–7 p.m., MBA, 20 West St., Boston
Faculty: Kevin Diamond, Esq., program chair; David J. Correira, Esq.; Eric Correira, Esq.; Al Gordon, Esq.

MONDAY APR. 24
Arbitration: Spotlight on Evidence
5–6:30 p.m., MBA, 20 West St., Boston

WEDNESDAY APR. 26
Where Divorce, Valuation and Asset Division Meet Atypical Assets
4–6 p.m., MBA, 20 West St., Boston
Faculty: Heidi-Rachel Webb, Esq., program chair
Additional faculty to be announced.

THURSDAY APR. 27
Navigating Unconscious Bias — Potential Impact and Real World Strategy
4:30–6:30 p.m., MBA, 20 West St., Boston
Faculty: Jonathan W. Fitch, Esq.; Eric Correira, Esq.; Al Gordon, Esq.

UPCOMING MBA CONFERENCES

SECOND ANNUAL COMPLEX COMMERCIAL LITIGATION CONFERENCE
Thursday, April 6, 1–5 p.m.
Hyatt Regency Boston
1 Avenue de Lafayette, Boston
Cocktail reception to follow

CONFERENCE PRICING
MBA law students ......................... FREE
MBA new admitters and part-time MBA’s .... $75
MBA members .......................... $99
Non-members .......................... $180

Register at MassBar.org/ComComConference
(617) 338-0530

2017 ANNUAL HEALTH LAW SYMPOSIUM
Friday, April 7, 9 a.m.–2 p.m.
MBA, 20 West St., Boston

SYMPOSIUM PRICING
MBA members .......................... FREE
Non-members .......................... $160

MassBar.org/HealthLaw
(617) 338-0530

INAUGURAL JUVENILE & CHILD WELFARE CONFERENCE
GAULT AT 50, THE LIVING LEGACY
Friday, April 7, 10 a.m.–5 p.m.
UITEC Center
35 Warren St., Lowell

CONFERENCE PRICING
MBA members ......................... $50
Non-members .......................... $100
This program qualifies for 7 CAFL/YAD credits.

SPECIAL PRICING
CFL and YAD panel practitioners and Juvenile Law Bar Association members attend for $75. Call MBA Member Services at (617) 338-0561 to register.

Register at MassBar.org/JCWCConference
(617) 338-0530

UPCOMING MBA ON DEMAND PROGRAMMING

MBA ON DEMAND

Check out these MBA On Demand programs you may have missed and view them anytime, anywhere ... FREE with your MBA membership.

FIND THESE PROGRAMS AND MORE AT MASSBAR.ORG/ONDEMAND

- The New Marijuana Law: Impacts on the Workplace (Recorded March 9)
- Addressing the Challenges of Demanding Mediations (Recorded March 8)
- Data Protection Revisited: What Does It Mean to Have a Secure Law Firm in 2017? (Recorded March 8)
- Children in Removal Proceedings: Focus on Special Immigrant Juvenile Status (Recorded March 7)
- Access to Digital Assets after Death (Recorded March 2)

Register at MassBar.org/MassBarProfessionalism

UPCOMING CLE, SEMINARS AND MBA ON DEMAND PROGRAMMING
Muldoon to receive MBA’s Gold Medal Award at May 4 Annual Dinner

The Massachusetts Bar Association will honor Robert J. Muldoon Jr. with the MBA’s Gold Medal Award at the May 4 MBA Annual Dinner. The MBA’s Gold Medal Award is reserved for individuals who have provided outstanding legal services that have benefited the legal profession in Massachusetts.

Muldoon is a former managing partner of Sherin and Lodgen LLP, co-chair of the firm’s professional liability practice and member of the litigation department. During his five-decade career, Muldoon has represented numerous national and international corporations in commercial litigation, and has extensive experience in the defense of malpractice cases, science and pharmaceuticals, land use and development, and other real estate issues.

A lifetime MBA member, Bob was an author of the Real Estate Bar Association for Massachusetts, Inc. v. National Real Estate Information Services and National Real Estate Information Services, Inc. amicus brief to the SJC on behalf of the MBA. He has held a number of leadership roles throughout his career with the Massachusetts Supreme Judicial Court Board of Bar Examiners, the Superior Court Business Litigation Session Advisory Committee, the Boston Bar Association and Massachusetts Continuing Legal Education Inc. (MCLE). Committed to expanding access to justice, Muldoon is a fellow of the American, Massachusetts and Boston bar foundations.

“Bob Muldoon is a paragon of professionalism, ethics and civility,” said MBA Treasurer Christopher A. Kenney. “He is well known for his litigation and courtroom prowess, but is equally renowned for the courtesy and collegiality he shows to everyone he encounters. He is the original Atticus Finch. The MBA Gold Medal is reserved for models of professional excellence like Bob Muldoon.”

Among his many accolades, Muldoon is a member of the American College of Trial Lawyers and has been ranked by Chambers USA, The Best Lawyers in America, and Super Lawyers, and has been noted by Chambers as a “statesman of the bar.”

Muldoon is a graduate of Boston College (A.B. and M.A.) and Boston College Law School. He served as law clerk for the Hon. Paul G. Kirk, Supreme Judicial Court of Massachusetts, from 1965-1966.

The Annual Dinner will also include a keynote address by CNN senior analyst and best-selling author Jeffrey Toobin, the presentation of the 2017 Access to Justice Awards, the Oliver Wendell Holmes Jr. Scholarship and more.

MassBar Beat episodes examine Homeless Court, bias

The latest episodes of the MassBar Beat — the official podcast of the Massachusetts Bar Association — are now available.

In “Homeless Court: A Second Chance at Hope,” the MassBar Beat looks at the inspiring work of Homeless Court, a specialty court in Massachusetts that gives homeless individuals with minor infractions a chance to clear their records and get a new start.

MBA Young Lawyers Division leaders Tori Santoro (chair) and Samuel Seag (chair-elect) had an opportunity to visit this “court of second chances” at the Pine Street Inn shelter in Boston. In this episode, hear observations from their visit, along with interviews and stories of hope from Boston Municipal Court Judge Kathleen Coffey; the Pine Street Inn’s Elizabeth Condon, who coordinates Homeless Court; two Homeless Court participants, who were interviewed after their hearings; and MBA President Jeffrey Catalano.

In another episode, “Defamation Courtroom Drama Encourages Dialogue about Bias,” the MassBar Beat looks at “Defamation” the play, a touring courtroom drama written by Todd Logan, which has been performed hundreds of times around the United States since its debut in 2010.

At its core, the play is about a fictional civil lawsuit over a claim of defamation. But the courtroom is really just the setting for what turns out to be a thought-provoking, interactive program about diversity that forces the audience to confront and talk about stereotyping and perceptions of bias in the play and in our legal system.

Last fall, the Massachusetts Bar Association was proud to sponsor the Massachusetts Black Lawyers Association’s annual presentation of Defamation the play to an audience of Boston-area high school students. Many of the issues addressed in the play are similar to the issues addressed in the MBA’s recently launched CLE series on identifying and eliminating implicit bias in the courtroom. Sponsoring the MBA’s presentation of Defamation the play offered a unique opportunity to get students talking about bias and diversity, while also demystifying the legal system for them at the same time.

In this episode, hear from some of the high school students in the audience, along with the MBA’s Shesha Emmanuel and MBA President Catalano, as they discuss the important issues and questions about bias raised in the play.

Listen to the MassBar Beat for free on iTunes, SoundCloud, Google Play Music, Stitcher and other popular platforms. Better yet, subscribe so you don’t miss a “Beat!”
Tucker, Saltzman, Dyer & O'Connell LLP a leader in liability defense

Our lawyers and staff volunteer their time and experience with multiple organizations, including local youth sports, the Angel Fund for ALS research, Wreaths Across America, the Susan G. Komen 3-Day and Race For The Cure, and the Gloria Gemma Breast Cancer Resource Foundation.

What types of law does your firm handle?

Tucker, Saltzman, Dyer & O’Connell, LLP represents individuals, businesses and insurance companies in cases involving product liability, the defense of medical professionals, nursing homes, and other care facilities and providers, premises liability, automotive liability, liquor liability, construction accidents and defects, environmental liability, insurance coverage analysis and litigation, commercial disputes, employment litigation, subrogation and general liability.

Any particular areas of law where the firm has made a name for itself?

We have achieved sustained success and recognition in all areas of civil litigation, subrogation and general liability, medical and nursing home liability, premises liability, construction liability and transportation liability, and construction defects claims, as well as representing insurers and insureds in insurance coverage and “bad faith” litigation.

What firm attribute do clients find most attractive?

Our clients appreciate the depth of knowledge and experience our attorneys provide, as well as our high level of attention and responsiveness.

Describe a recent volunteer activity the firm has undertaken.

We are participating in the MBA’s upcoming Mock Interview Program. Is your firm regularly active with any charitable or civic organization?

Breast Cancer Resource Foundation.

The MBA — your firm’s partner

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

Join our growing list of Honor Roll firms by contacting MBA Member Services at (617) 338-0530 or memberservices@massbar.org

Ethics opinions, Drug Court speaker round out Jan. HOD meetings

The Jan. 26 meeting of the Massachusetts Bar Association’s House of Delegates (HOD) featured a historic vote on an immigration-related resolution, the approval of several new ethics advisory opinions and a presentation about the Dorchester Drug Court.

The immigration resolution (www.massbar.org/immigrationresolution, and see page 12), introduced by MBA President Jeffrey N. Catalano and Civil Rights & Social Justice Chair Richard W. Cole, saw HOD members vote overwhelmingly to affirm the MBA’s support for the due process rights and need for legal representation for undocumented immigrants in Massachusetts. “It’s important that we act now and show that the MBA is prepared right now to take a leadership position,” said Catalano, before the vote.

Prior to the adoption of the immigration resolution, Harvard Law School Professor Andrew Kaufman, the chair of the MBA’s Committee on Professional Ethics, received approval from HOD members to publish four ethics opinions. The published opinions (www.massbar.org/ethicsopinions) answer questions about:

- Engagement letters when lawyers change firms;
- Representing multiple plaintiffs against the same defendant;
- Releasing a file concerning the execution of the will of a deceased client to a proponent of the will when a will contest is pending; and
- Rule 8.3’s requirement to report misconduct to Bar Counsel’s Office.

Another highlight of the meeting was a presentation by Boston Municipal Court Judge Serge Georges Jr. on the Dorchester Drug Court. As the presiding judge of the court, Georges talked about how the Drug Court, one of four specialty courts in Massachusetts, has been successful in helping to rehabilitate certain drug addicts with drug-related offenses, and how and why the session is different than regular BMC or District Court. Several MBA leaders gave reports at the start of the meeting, including Catalano, who touted the newest MassBar Beat podcast on the Homeless Court and talked about recent collaborative efforts with affinity and county bar associations. President-elect Christopher P. Sullivan previewed an upcoming program on how to become a judge. And Vice President John J. Morrissey announced a March program about eliminating implicit bias through attorney-conducted voir dire. MBA Chief Legal Counsel Martin W. Healy also shared the news that attorney-conducted voir dire will be coming to the District.

Also at the meeting, the HOD approved the recommendation to elect five attorneys — Richard P. Campbell, William Hogan III, Josephine McNeill, Francis Morrissey and Brigid Mitchell — as MBA delegates to the American Bar Association (ABA) House of Delegates.

The meeting concluded with a presentation by Lisa C. Goodheart on the 2016 Report of the Court Management Advisory Board on the Management and Administration of the Massachusetts Trial Court.
Immigration resolution passed at January HOD

The following resolution was passed at the January House of Delegates meeting. MBA President Jeffrey N. Cataldo was subsequently quoted by the Springfield Republican and Massachusetts Lawyers Weekly.

RESOLVED. That the Massachusetts Bar Association (MBA), which has long supported equal justice and the due process of law, reaffirms its support for and commitment to vigorously defend the rule of law and fundamental constitutional and statutory rights and due process protections in the detention or deportation of residents of Massachusetts. Specifically, that MBA endorses actions by the federal government, and where applicable, the Commonwealth, that:

(1) Promptly and fully inform the public about the specific parameters of any immigration enforcement policy for expedited detention and deportation of illegal immigrants, those with temporary lawful status, and immigrants who are without lawful immigration status;

(2) Ensure that appropriate legal measures are taken to prevent and prohibit any discriminatory immigration-related enforcement practices by federal, state, or local government officials or private persons based on race, ethnicity, national origin, religion, sexual orientation, gender identity or gender expression;

(3) Preclude the use of any database established or maintained by the U.S. Citizenship and Immigration Services, or any other governmental agency or entity, based on Executive Orders and immigration enforcement policy and programs under “DACA” (Deferred Action for Childhood Arrivals), to identify and locate undocumented immigrants for any detention and deportation program unrelated to national security concerns. Such information would be unfair to penalize such persons who applied in good faith for provisional waivers of unlawful presence, protection against deportation, and temporary work authorization, under then-existing U.S. government policy;

(4) Continue, until adoption of comprehensive immigration reform legislation, immigration enforcement programs that protect certain immigrants residing in Massachusetts from detention or deportation and preserve avenues of deportations or deportations that result in family separations and negatively impact the education of students;

(5) Ensure that attorneys representing immigrants at hearings are provided reasonable access to their clients in detention and full access to all information that has subjected the individual to deportation;

(6) Establish, in collaboration with the Massachusetts legal community, an effective system that ensures free legal representation for all immigrants facing deportation proceedings who are unable to afford an attorney, on account of the complicated nature of immigration law and immigration court proceedings, where many undocumented immigrants lack an understanding of their legal rights and options, and given that the government is represented in such proceedings, and where deportations often result in prolonged detention and incarceration, disrupting families and communities, causing negative financial impacts, and creating fear of loss of liberty of individuals deported to their “homelands”;

(7) Inhabit “sanctuary city” protections in Massachusetts as such protections promote trust and cooperation with law enforcement essential to public safety; and

(8) Support comprehensive immigration reform legislation that provides for legal status and a pathway to citizenship for undocumented immigrants that align with and respect the principles upon which this nation was founded.

Affinity bars show support for resolution

The MBA resolution received praise from members of the legal community around the commonwealth. Several affinity bar association leaders in attendance at the January HOD meeting also expressed their strong support for the MBA resolution.

Eugene H. Ho, president of the Asian American Lawyers Association of Massachusetts (AALAM), said: AALAM is proud to stand with the MBA and the other affinity bars on this important resolution. As a voice for our members, many of whom are first and second generation immigrants, and in light of President Trump’s recent executive order halting immigration from seven Muslim-majority countries, it is more important now than ever that we reaffirm our commitment to vigorously defend the rule of law and fundamental constitutional protections related to the detention and deportation of residents of Massachusetts, and endorse actions by the federal government that ensure equal justice and due process in enforcement of any immigration policies and legislation. We thank the MBA for its leadership in passing this resolution, and we are committed to working with the MBA and the other affinity bars to ensure that all immigrants have access to justice.”

Migdalia Iris Nalls, the president of the Massachusetts Association of Hispanic Attorneys (MAHA), said: The Immigration Resolution adopted by the MBA speaks volumes at a critical time in history, where we are witnessing our Constitutional Due process rights and Human rights under attack by Federal Executive orders. Within MAHA, we see first-hand the terrible consequences of the violations of these rights. Immigrants are already hesitant from seeing their families abroad and living in fear of work availability and family separation; causing stress and trauma to their families and children. This is morally unacceptable in our society and we deeply thank the MBA for taking action to support a state and country made of immigrants.”

Saraa Basaria, president of the South Asian Bar Association of Greater Boston, said: “The South Asian Bar Association of Greater Boston (SABA GB), comprised of many first-generation Americans, strongly supports the MBA Resolution regarding prohibition of discriminatory immigration enforcement policies and is committed to championing lawful immigration policies that align with and respect the principles upon which this nation was founded. ”

MBA president issues statement on executive orders

This statement was also sent directly to all MBA members via email on Feb. 10.

When the Massachusetts Bar Association was incorporated in 1910, it adopted the motto Fiat JUSTITIA” — Let Justice be Done. Over the course of the MBA’s 100 year existence, we have been called upon to live up to that creed. At various times, we have spoken on matters of great importance to our juridical system and the rights of others under the state and federal constitutions. Many matters were controversial at the time, but history has favorably upon our actions on those occasions. As this state’s largest bar association, we have always understood that apathy is not an option in matters of justice. It is because unchecked infringements on the rights of one diminishes us all.

We are now presented with another occasion where the Massachusetts Bar Association and the Massachusetts Access to Legal Services Committee and the House of Delegates meeting served as the model for the US Constitution. It is particularly incumbent upon this bar and each of our members to fight threats to due process rights under both those constitutions. These threats arise when actions are taken that may deport or detain people without a fair hearing, or that may separate mothers from children, such as in the New Bedford factory sweep; or that unfairly discriminate against or burden people seeking refuge on our shores.

Accordingly, the MBA is proud to be the first state bar to pass a historic Immigration Resolution reaffirming our support for the due process and constitutional rights of those who are subjected to deportation or detention under new EOs. This Resolution, sponsored by MBA’s Richard Cole, received the overwhelming support of our section councils, county bars and affinity bars, and the House of Delegates at our meeting on January 29, 2017.

It endorses actions by our governors to "[e]nsure that appropriate legal measures are taken to prevent and prohibit any discriminatory immigration-related enforcement practices by federal, state, or local law enforcement officials or agents that are ordered to persons based on their race, ethnicity, national origin, religion, sexual orientation, gender identity or gender expression." In addition, the Resolution endorses immigration enforcement programs that "prevent expansive detentions or deportations that result in family separations and negatively impact the education of students.”

Following that Resolution, the MBA provided a Declaration in support of the commonwealth’s motion in federal District Court to extend the temporary restraining order on the ban due to harm to the commonwealth and its residents. The Declaration I drafted with MBA Chief Legal Counsel Martin Healy expressed the concern that the EO would cause unfair discrimination and inordinately impact foreign attorneys practicing here, as well as law firms that represent multi-national companies, and Massachusetts law schools with international faculty and students.

This week the MBA, under the leadership of Kevin Curtin, became the only state bar association to co-sponsor the American Bar Association’s Resolution urging that the executive branch ensure that any execution order concerning border security, immigration enforcement and terrorism be within the bounds of laws, treaties, and other agreements.

Sometimes these occasions to act seem laden with partisanship, but that is never the MBA’s motivation. And, the MBA must not let any such misperception deter us in our pursuit of the overarching goal of protecting our rights, our expansions of which party is in power.

Underlying all of our measures is a common commitment to inter alia protect the unalienable rights of everyone. While national security is a compelling government interest, there is also much at risk if we do not challenge arbitrary and discriminatory actions against our most vulnerable people by our highest authorities.

Throughout our efforts, we followed an orderly and fair process that obtained overwhelming consensus. We are very honored by the broad praise we have received for our work. We realize that this feeling may not be unanimous. However, this great bar association has an opportunity to demonstrate that unity unites us in far stronger ways than that which divides us. And that which must unite us was eloquently stated by Chief Justice Edward F. Henry. The Supreme Judicial Court when he addressed the MBA in 1986:

“We are becoming an increasingly pluralistic nation. Of all things that threaten the integrity and the fabric of democracy, the most clear and present danger is the most clear and present danger to our country, particularly as we observe the divisions, the hostility, and the dark animus that is growing in our country. Wouldn’t it be a great thing if the lawyers of America were to become a permanent, outspoken cadre for fairness, equality, and decency for all persons, and all groups, and against bigotry and discrimination.

Thirty years later, the MBA is again prepared to continue its most important mission of ensuring that “Justice be Done” — always and in every matter.
Dispute Resolution hosts open meeting in Springfield

The Dispute Resolution Section hosted an open meeting in Springfield on Feb. 1 on Best Practices for Advocates in Mediation. The program covered how counsel representing clients in litigation can use mediation to their client’s advantage, including:

- Deciding whether mediation is the preferred process for the dispute
- Determining how to get to the mediation table
- Selecting a mediator: expertise and process skills

New admittees: Activate your free membership today

Do you know or work with new lawyers who were admitted to the bar in November 2016? Let them know their FREE 2016-17 Massachusetts Bar Association membership is just a click away. Once they activate their new membership at www.massbar.org/join they will have access to:

- FREE networking events, where members of the legal profession meet and mingle in a relaxed social setting
- FREE use of My Bar Access, an online community exclusive to MBA members, that provides an opportunity to connect and network with thousands of fellow legal professionals online or via our mobile app
- FREE access to MentorMatch, a virtual career development tool that will help build strong relationships and referral networks with fellow participants
- FREE educational seminars and on-demand programs
- FREE and unlimited use of Fastcase, one of the largest online legal research libraries
- And much more

Questions? Visit www.massbar.org/newadmitteoffer to learn more or contact MBA Member Services at (617) 338-0530.

Remember to renew your LRS membership

If you are a member of the Massachusetts Bar Association’s Lawyer Referral Service and would like to continue to receive client referrals, don’t forget to renew your Massachusetts Bar Association’s Lawyer Referral Service membership as soon as possible. The 2017-18 LRS year starts April 1, 2017.

Each day, LRS representatives carefully screen more than 100 calls from the public. Referrals are based on the nature of the caller’s legal issue, as well as their geographic location and financial situation. Annual dues are $100 for members admitted to the bar five years or less and $150 for members admitted to the bar for five years or more.

Ways to renew:
- Renew online at https://massbarintouchondemand.com/. Log into your LRS membership portal. Enter your email and password or click “Forgot Password” if your password is unknown.
- Renew by mail. Contact the Lawyer Referral Service directly at (617) 338-0556 or email LRS@massbar.org to request a membership invoice be sent directly to your office, or if you have any questions.

We welcome Jim in his return to private practice.

As one of the longest serving health care executives in Massachusetts, Jim brings years of experience from both the provider and payer perspectives, having chaired national health and insurance associations.

Jim’s legal judgment, practical acumen and big-picture understanding of the health care sector will benefit clients looking to make smart adjustments in a constantly shifting environment. Welcome, Jim!

Contact:
James Roosevelt Jr., Esq.
(617) 274-2875
jroosevelt@verrilldana.com
One Boston Place, Suite 1600
Boston, MA
Recalling one’s ethical duty to the corporate client

BY RICHARD P. CAMPBELL AND SUZANNE ELOVECKY

Corporations are legal fictions that are nonetheless treated as “persons” in most of our laws and in most circumstances by our courts. But as one academic put it when describing a corporation and a theoretical right of privacy: “Corporations can no more be injured by an invasion of their ‘privacy’ than they can swear, scratch, make love, or engage in any other flesh-and-blood activities that the walls of privacy serve to protect from unwanted observation.”

Richard P. Campbell  Suzanne Elovecky

Suzanne Elovecky practices at Todd & Weld LLP, with a national practice, in 1983. She is a fellow of the American College of Trial Lawyers and a past president of the Massachusetts Bar Association. She founded Campbell Campbell Edwards & Conroy, P.C., a firm with a national practice, in 1983.

With regard to a corporate client, a lawyer “represents the organization acting through its duly authorized constituents.” Rule 1.13 (a). Restated, the lawyer owes loyalty and fealty to the corporation; she does not owe loyalty and fealty to the duly authorized constituents. They are not her clients. The distinction is easy to articulate but very difficult to apply in the real world. After all, the duly authorized constituents (like the general counsel or staff lawyer) are the individuals who hold the decision-making authority to hire and fire lawyers. Biting the hand that feeds you is not an optimum pathway to financial success.

What happens when the duly authorized constituents are acting in ways that violate the law or are likely to bring about serious harm to the corporation? The background facts and circumstances (set forth in the published report of the outside independent investigation team leading General Motors Corporation to recall motor vehicles incorporating the so-called Cobalt ignition switch offers unique insights. (See, e.g., http://www.nytimes.com/interactive/2014/04/05/business/06gm-report-doc.html?_r=0; http://www.cnbc.com/2014/04/07/anton-valukas-report-on-gm-redacted.pdf).

The Cobalt ignition switch was defective because it could be inadvertently moved or bumped from a “run” position to an “accessory” position while the vehicle was in motion on the highway, resulting in a “rolling stall.” Engine stall in a moving vehicle is itself a dangerous condition because it creates the possibility of loss of control. More importantly, when the ignition was in the “accessory” position, the vehicle airbags could not fire because the electrical circuit needed to deploy airbags was open. The driver of an out-of-control vehicle (for example, running off the road) could bump the engine switch and render her airbags useless.

General Motors incorporated the subject ignition switch into six different vehicles, beginning in calendar year 2002 (Saturn Ion –MY 2003; Chevrolet Cobalt –MY 2005; Chevrolet HHR –MY 2006; Pontiac G5 –MY 2007; Saturn Sky –MY 2007; and Pontiac Solstice –MY 2006). Customer complaints about the switch were manifest by 2005. By 2010, unexplained airbag non-deployments were so significant that outside counsel warned staff counsel that awards of punitive damages were likely. In 2013, outside counsel described plaintiffs’ cases for airbag non-deployment as “compelling” and raised again the likelihood of punitive damages. In December 2013, more than 8 years after manifest consumer complaints, the Cobalt Ignition Switch finally reached the executive committee responsible for issuing recalls. On January 31, 2014, the executive committee issued a recall, but it did not cover all models that used the faulty ignition switch design. By March 2014, General Motors’ recall included over 2 million vehicles at a cost of roughly $10 billion. Thereafter, on May 16, 2014, NHTSA and General Motors executed a consent decree that included a $35 million penalty for General Motors’ failure to provide timely notice of the product safety defect and gave NHTSA invasive control over General Motors’ safety related decision-making.

General Motors “duly authorized constituents” included staff lawyers working in various positions and including the General Counsel (themselves governed by the code of professional responsibility) as well as corporate engineers and executives leading to the chief executive officer and members of the board of directors. General Motors’ outside national counsel (one of the nation’s renowned law firms) likewise were governed by the rules of professional conduct. The Highway Safety Act imparts significant civil and criminal penalties (including a potential imprisonment of 15 years) to vehicle manufacturers like General Motors and to individuals who violate its mandates. 49 U.S.C. §30115 65 and 70. Because General Motors is a publicly traded company, federal security laws were also relevant. Sarbanes-Oxley Act of 2002, §307 mandates that an attorney (practicing before the SEC) report evidence of a breach of fiduciary duty to the chief legal counsel or CEO, and, if there is no appropriate response, report the evidence to the Audit Committee of the board of directors. 15 U.S.C. 7245; 17 C.F.R. Part 205.3. But for the purpose at hand in this article, the applicable rules of professional conduct are most directly pertinent.

Rule 1.13 provides that a lawyer representing a corporation must “proceed as reasonably in the best interest of the organization” when she knows “that an officer, employee, or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation of the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization.” In such circumstances, “the lawyer shall refer the matter to higher authority in the organization” and if need be, “to the highest authority that can act on behalf of the organization.” (Sarbanes-Oxley regulations identify the audit committee of the board of directors as the highest authority in a corporation.) Recognizing the dicey position of informing “duly authorized constituents” that their conduct is improper and harmful to the organization, the rules permit a lawyer who is discharged (or withdrawn) because she took requisite actions to protect her client to “proceed as the lawyer reasonably believes necessary to assure that the organization’s highest authority is informed of the lawyer’s discharge or withdrawal.” Rule 1.13 (e).

The scope of the lawyer’s representation, as set forth by Rule 1.2(a), is the pursuit of “the lawful objectives” of the client “through reasonably available means permitted by law and these rules.” In pursuing the client’s lawful objectives, the lawyer must represent the client “zealously within the bounds of the law.” Did General Motors’ staff lawyers and outside counsel working on the Cobalt ignition switch claims and litigation for many years run aforesaid of their professional obligations to the organization by failing to raise the problem to the attention of the highest authorities in the company? Or were they pursuing General Motors’ lawful objectives zealously and within the bounds of the law? Read Anton Valukas’ 315 page report and draw your own conclusions.

Richard P. Campbell is a fellow of the American College of Trial Lawyers and a past president of the Massachusetts Bar Association. He founded Campbell Campbell Edwards & Conroy, P.C., a firm with a national practice, in 1983.

Suzanne Elovecky practices at Todd & Weld LLP, where she enjoys a diverse complex commercial litigation practice representing individuals and corporations in contract disputes, employment disputes, automobile dealership matters, shareholder disputes, and trademark, trade secret and copyright disputes. Suzanne is a member of the Women’s Bar Association, the Boston Bar Association and the Massachusetts Bar Association (Complex Commercial Litigation Committee; Professional Ethics Committee).

Budget, access to justice initiatives discussed at bench-bar meeting

MBA President Jeffrey N. Catalano spoke to court chiefs and fellow bar association leaders at a meeting at the John Adams Courthouse in Boston on March 1, reaffirming that the “the MBA is firmly — and always will be — behind the courts.”

Prior to Catalano, Supreme Judicial Court Chief Justice Ralph D. Gants welcomed attendees and spoke about the upcoming challenges in the year ahead with respect to legal services, access to justice initiatives, budget concerns and continuing to preserve the rule of law in Massachusetts. Massachusetts Trial Court Chief Justice Paula Carey and Trial Court Administrator Harry Spence also spoke at the event, where they discussed the Trial Court’s budgetary areas of focus, including specialty courts, statewide expansion of the housing court system, security enhancements and more.

Hon. Dina E. Fein, first justice of the Housing Court Department for the Western Division and special advisor to the Trial Court for access to justice initiatives spoke about the 1000 Firsts Project and its goal of providing essential civil legal needs.

This year’s bench-bar meeting concluded with a reception.
NEW FASTCASE 7

FLY THROUGH YOUR LEGAL RESEARCH WITH THE NEWEST VERSION OF THE WORLD’S MOST VISUAL SEARCH PLATFORM. RESERVE YOUR SEAT TODAY AT 866-773-2782

LEARN MORE AT: WWW.MASSBAR.ORG/FASTCASE
Lawyers’ role morphing into therapist

BY HEIDI S. ALEXANDER

Let’s start with this premise. Your data (regardless of where you store it electronically or physical) is never 100% safe. This is true not only for your clients but also for your own security and risk analysis. Thus, there is no clearly defined list of measures that comprise reasonable efforts, and indeed the concept of the role take into account a variety of factors that include the cost and hardship of implementing safeguards in your practice.

While your firm needs to undergo its own security and risk analysis, you can start with the five basic steps below to help minimize your risk of a breach, thus minimizing a violation of ethical duties and a multitude of other problems unrelated to your professional obligations.

1. Get proper training. Create and follow policies and procedures.

There are many different ways in which your data might be breached, but the simplest is through human error. Take for example, ransomware, a popular type of malware that locks up users’ files until a ransom is paid. Ransomware is allowed by users to run. You must take some action, for example, click on a suspicious link in an email which then allows the software to install. Even after proper training, you can prevent this. While more comprehensive and regular training is advisable, here are a few tips: 1) be thoughtful before you click on anything, including emails, particularly if you do not recognize the sender and/or the request is urgent, if you haven’t requested this information, or if it is unlikely to receive the email; 2) hover over the email address and any links to ensure that the link address matches the address or name of the file; and 3) be wary of links ending in zip or rar. Take responsibility for your actions and your employees. Have policies and procedures, including a Written Information Security Program (WISP), which addresses risks, training, safeguards and response. Then, follow those policies and procedures and review them regularly with your staff.

Keep in mind that data breaches, trends and variations in scams and malicious attacks. If you don’t have time (and, why wouldn’t you?), pay someone (such as an IT professional) to keep you up-to-date.

2. Passwords, passwords, passwords.

Passwords can make all the difference. Strong passwords can prevent unauthorized access and prevent hackers from impersonating you to gain access to others. You must have unique passwords. No one password should be used for more than one account. To keep track of all your passwords, don’t keep them on a sticky note next to your computer, rather use a password manager, which is an electronic program that saves all your passwords in an encrypted vault and requires only one master password to gain access. Password managers can also generate random long multi-character passwords, which are the strongest types of passwords.

Also, use two-factor authentication if available and when possible. For services like Dropbox and Google, this is an absolute must, and it’s not difficult to set up. It requires both a password and a physical device to receive a code. If you do online banking, you should be using two-factor authentication.

3. Back up your data – in at least one place!

A backup will save you in the event of a hard drive failure, or a stolen or lost laptop (which, by the way, is one of the most frequent causes of a data breach claim). Be sure to explicitly that you are not a crisis service. Don’t attempt to be all things to all people. This is the kind of situation that we often address in the community and contributes to publications on law practice management and technology. She is the founder and publisher of the Massachusetts Lawyers Journal. Dr. Jeff Fortgang is a licensed psychologist and licensed alcohol and drug counselor on staff at Lawyers Concerned for Lawyers of Massachusetts, where she advises lawyers on practice management matters, provides guidance in implementing new law office technologies, and helps lawyers develop healthy and sustainable practices. He also clerked for a justice on the highest court of New Jersey and served as the editor-in-chief of the Rutgers Law Review. She is a native Minnesotan, former collegiate ice hockey goaltender for the Amherst College Women’s Ice Hockey Team, and mother of these young children.

Dr. Jeff Fortgang is a licensed psychologist and licensed alcohol and drug counselor on staff at Lawyers Concerned for Lawyers of Massachusetts, where he and his colleagues provide confidential consultation to lawyers and law students, and offer presentations on subjects related to the lives of lawyers. Q&A questions are edited and condensed. The opinions and disguised concepts expressed by individuals seeking LCL’s assistance. Questions may be emailed to DrJeff@LCLMA.org.
Seven things you should know about what clients think

For lawyers, “taking care of business” means taking care of clients. So, it pays to know what your clients really think.

During my years of interviewing clients and reviewing nationwide client surveys, I have discovered a number of commonly recurring themes. Below are just seven of the most commonly held opinions that clients have about lawyers and legal services.

**We vote with our feet.** A majority of clients say that they register complaints by leaving. They don’t offer constructive criticism to lawyers unless asked, and if they call you to complain, it is usually already too late to ask for helpful criticism. When lawyers don’t ask how they are doing from a service perspective during the course of or at the close of an engagement, they risk never seeing a client again. In the words of a country song, “If the phone doesn’t ring, you’ll know it’s me.”

If we love you, we’ll recommend you. Most clients say they’re happy to make a referral or introduction for any reason, it does not mean you did a bad job, but you probably did not stand out.

We need to like you to trust you. Every client I have ever surveyed said they prefer to like the lawyer they hire as a person. Over half of clients have told me they must like you to hire you. Retail, consumer clients often pressure your competence, but not your likeability. Corporate clients will gauge your competence more carefully, but between two competent choices, they always prefer the lawyer they like. Surprisingly, a sizeable minority of corporate clients have told me they disliked a lawyer because they saw the attorney being intentionally or unintentionally disrespectful or insensitive to someone (often an employee or opponent).

We want to know you have worked with people like us. Corporate clients repeatedly say that experience representing clients in their industry is a key hiring factor. Many even rank it as the primary hiring factor. Consumer clients similarly want to know that you have represented people like them in their situation (i.e., an injured construction worker wants to know you have represented other injured workers like him).

We want you to talk numbers more than you do. Most clients and corporate clients in particular, want more quantitative information than they currently get prior to hiring. They want to know how many cases you have handled like their case. They want to know the average length of time to trial, average costs to get there and the range of likely damages the trier of fact could award. They want you to talk percentage chances in terms of outcomes and costs and time. Corporate clients often insist on forecasts now. One told me: “My company has to do a budget forecast and timeline to build a complex construction project involving numerous parties, labor unions, suppliers, weather issues and other variables. Don’t tell me about the unpredictable complexities of a trial.” More than one CEO has told me that they’re surprised how little quantitative information lawyers generally offer: That creates a huge opportunity for firms that are willing and able to work harder on the quantitative side while navigating any ethical boundaries that prohibit the promise of a specific outcome.

We don’t want to be forgotten. One of the more common complaints about legal service is easy to avoid with routine periodic notices to clients about the status and progress of their matters. Consumer clients don’t know how long it takes to prove that estate or get to trial for their injuries, and they don’t know what you are doing about it as months and years tick away. They say they feel forgotten unless they hear from you periodically about the progress of their matter and what you are doing to bring it to conclusion. Corporate clients are more likely to call you, but they prefer proactive communication, provided that it comes without expensive charges for quick status updates.

We are happy to give you helpful service suggestions if you ask. While many clients don’t want to approach you about service deficiencies, most say they welcome the following question from their lawyers: “How are we doing and how can we improve?” Consumer clients feel it shows respect, and corporate clients often have cultures dedicated to perpetual improvement, so they value that question from their service providers. Corporate clients are constantly surveying their customers about their service preferences and dislikes so they understand the importance of that exercise.

**BY JOHN O. CUNNINGHAM**

John O. Cunningham is a writer, consultant and public speaker. As a lawyer, he served as General Counsel to a publicly traded company and to a privately-held subsidiary of a Fortune 100 company. For more information about his work in the fields of legal service, marketing, communications, and management, check out his website and blog at johnocunningham.wordpress.com.
Lost in a maze of numbers?

Don't Get Lost in the Numbers...
EPR has been providing clear, understandable, fast-driven economic analyses of damages in personal injury, wrongful death, medical malpractice, commercial, marital, and employment cases since 1983.

John B. Glynn, Esq.
25 Beacon Street, 2nd Floor
Boston, MA 02108
781-356-1399
jbglynn@glynnmediation.com

Tell These Experts You Saw Them in Lawyers Journal

If you’re an expert and can help MassBar members, email advertising@thewarmgroup.com to introduce your expertise to the influential audience.

Lost in a maze of numbers?

Our economists can help.

Expert Witness
• Trust and Will Analysis
• Fiduciary Duty
• Trust Administration

Expert Witness
• Trust and Will Analysis
• Fiduciary Duty
• Trust Administration

EXPERTS & RESOURCES
Law Practice Management

Can you keep your opinion to yourself?

BY CRISTINA G. “TINA” SHINNICK

Clients pay lawyers for their advice, counsel, guidance and their opinion. So, when is it important for a lawyer to not offer an opinion?

Lawyers as leaders and managers are tasked with setting a vision and course for their firm or organization. They are skilled at asking questions and leading discussions. They are good at probing for clarification and summarizing thoughts. They are organized and deadline-driven. But how good are they at facilitating?

Lawyer leaders sometimes find themselves in the role of facilitator, often with their lawyer peers inside their organizations. Managing partners are often in this role and most people might think they are the only ones called upon to facilitate. However, practice group and committee leaders may also find themselves in this unfamiliar territory. And it might actually be a bit uncomfortable for those trained to have an opinion and argue passionately in defense of it.

So, let’s consider what facilitating is
not then we can explore what it is. Facilitation is not:

• Entering in a discussion with a pre-conceived notion of the outcome
• Having a clear, pre-determined idea of where you want the discussion to end up
• Leading the discussion with your opinion, without evidence in support of your desired outcome, share that evidence in advance with your committee, present a PowerPoint presentation complete with pie-charts and graphs that provide further support for adoption of technology, and line up vendor demos for the committee, assume, of course, that the committee is in full agreement that the firm must invest in these tools. But how do you know what the committee members think or feel?

Facilitating a different skill set that requires drawing others into the conversation; listening actively for key points that need follow-up and further probing; guiding the discussion in a productive, helpful and inclusive manner; being completely agnostic about any outcome; checking your ego and your tendency to pre-judge what others might say at the door, and keeping your opinion to yourself.

For example, let’s say that you are leading a committee charged with exploring alternative technology tools that will provide greater efficiency and reduce billable time spent on matters, but the cost of these tools is not insignificant. Therefore, the committee needs to make a recommendation to a firm management after weighing all of the factors. You believe the firm simply must invest in these tools or risk losing valuable clients. To you, it’s a no-brainer. “Spend money to make money,” as the saying goes. But, you also know that others on your committee are not of the same mind. At least one of them still dictates to her/his secretary as opposed to drafting documents on their computers. How are you going to get from Point A to Point Z, if Point A is the present and Point Z is full adoption of technology efficiency tools?

One way would be to gather evidence in support of your desired outcome, share that evidence in advance with your committee, present a PowerPoint presentation complete with pie-charts and graphs that provide further support for adoption of technology, and line up vendor demos for the committee, assume, of course, that the committee is in full agreement that the firm must invest in these tools. But how do you know what the committee members think or feel?

If you start the process with your facilitator hat on, you will approach it differently. Your first meeting will be entirely devoted to asking questions, such as:

• How do people feel about what we have been asked to do?
• How should we go about the process of gathering data and assessing available tools?
• What internal information do we need in addition to external information?
• What’s the best way for us to gather and compile that information?
• Assuming that after we’ve done all of our assessment work and agree that the firm should invest in one or more efficiency tools, how willing are each of us to lead by example and fully adopt the selected tool?

And, the last thing you should do before ending any meeting is to go around the table and ask each person if they have any more thoughts, opinions or questions.

Handling the process as a facilitator versus leader will yield ancillary benefits, such as participants feeling heard, getting greater buy-in when the outcome is achieved and people being invested in a successful outcome.

Some people think that facilitation is the same as mediation. It is not. Mediation is for conflicts that need resolution; facilitation is working with a group focused on a common problem/solution/ desired outcome and making sure that all members of the group participate in the process.

Other examples where facilitation would be useful:

• Practice Group Leaders needing to write a business development plan for their group
• Heads of Committees tackling a specific issue in the firm, e.g., associate compensation
• Law Firm Leaders working on a strategic plan for the coming year

This is not to say that all leadership requires facilitation. To the contrary, law firm leaders are often called upon to direct the firm with vision, clarity, and strategy. The point is that facilitation has its place in law firms, along with leadership, mediation and conflict resolution. Learning to be an effective facilitator can help you unlock creativity that will yield hugely positive results.

[Image 376x1119 to 436x1170]

Crirstina G. “Tina” Shinnick is Sugarman, Rogers, Barshak & Cohen PC’s Law Practice Management

BY DOUGLAS SALVENSEN

If you are involved in class action litigation you may have an opportunity to support equal justice by designating class action residual funds for distribution to the Massachusetts Lawyers Journal on Lawyers’ Trust Accounts (IOLTA) Committee or directly to a legal aid program. In the past two years, such designations have brought local legal services for the poor such amounts as $393,926 and $254,408.

What are “residual funds”? At the conclusion of a class action, funds designated for the members of the plaintiff class are sometimes left over and not distributed. Perhaps members of the class cannot be located or fail to submit claims. Or the amount due is so small that the cost of notice, disbursement and administration may exceed the value of the class action residuals.

Both state and federal courts have broad discretion in determining how residual funds should be distributed. Courts have found IOLTA programs and legal aid societies to be appropriate recipients of these funds. Under Rule 23 in both federal and state procedure, the class action is designed to afford otherwise powerless class members access to equal justice. Legal services for the poor have a similar purpose, affording access to justice to people who would otherwise have no way to protect their rights.

In 2009, the Massachusetts Supreme Judicial Court amended Mass. R. Civ. P. 23 to explicitly provide for the payment of residual funds in class actions either to one or more nonprofit organizations. The funds benefit the class (which could include legal services programs) or the Massachusetts IOLTA Committee, which provides funds for legal services programs. The SJC in July 2016 amended the rule governing class action residuals to require plaintiffs to notify the Massachusetts IOLTA Committee before a judgment is entered or a compromise approved regarding the disposition of class action residuals.

At its annual meeting on August 8, 2016, the American Bar Association House of Delegates passed Resolution 104, which provided that the ABA urge state, local, territorial and tribal jurisdictions to adopt court rules or legislation authorizing the award of class action residual funds to non-profit organizations that improve access to civil justice for persons living in poverty. The IOLTA program established by the SJC, requires lawyers and law firms to use interest-bearing accounts for client deposits which are nominal in amount or expected to be held for a short term. The interest is remitted to the IOLTA program which then distributes it to three charitable entities: the Boston Bar Foundation, the Massachusetts Bar Foundation and the Massachusetts Legal Assistance Corporation. These entities distribute the funds to legal aid and administration of justice projects.

If you need additional information on class actions or would like to request a free copy of our Class Action Residual Handbook for Litigators, please contact the IOLTA Committee at 617-723-9093 or www.massiota.org.

[Image 413x67 to 484x160]
The Massachusetts Independent Contractor Statute, G.L.c. 149, § 148B (“IC Statute”), makes it difficult and risky for companies to classify workers as independent contractors. Prong B of the ABC Test, failure to satisfy Prong B is fatal to the independent contractor classification, even if the truck driver is free from control and works in an independently established trade or profession.

Misclassification in Massachusetts Carries Extraordinary Penalties

The consequences of misclassification are serious and expensive. An employee who has been misclassified as an independent contractor is entitled to the benefits that stem from an employment relationship, including the protections afforded to employees under the Massachusetts Wage Act. This, says the Massachusetts independent contractor statute and federal preemption Task Force and share information. Thus, the Massachusetts Department of Revenue and the Massachusetts Attorney General aim to recover funds therefore “runs counter to Congress’s congressional goal of avoiding “a patchwork of state service-determining laws . . . that determined were better left to the competitive marketplace.” Schwann, 813 F.3d at 438; see also Chambers, 476 Mass. at 101-102.

The SJC and the First Circuit have gone on to observe that Prong B of the IC Statute is unique among federal and state independent contractor laws “because it makes any person who performs a service within the usual course of the enterprise’s business an employee for state wage law purposes.” Schwann, 813 F.3d at 438; see also Chambers, 476 Mass. at 101-102. The IC Statute therefore “runs counter to Congress’s purpose to avoid “a patchwork of state service-determining laws, rules, and regulations” that determined were better left to the competitive marketplace.” Schwann, 813 F.3d at 438; see also Chambers, 476 Mass. at 103.

Applying these principles, the SJC in Chambers and the First Circuit in Schwann both held in 2016 that the FAAAA preempted Prong B of the IC Statute. In each case, the plaintiffs were delivery truck drivers who alleged that the defendants misclassified them as independent contractors when, in reality, they were employees under the IC Statute. Under the similar facts of these cases, the SJC and the First Circuit concluded that Prong B of the IC Statute both reflected Congress’s intent and likely would have a significant impact on the defendants’ routes and services because it would essentially require the defendants to use employeesther than independent contractors to provide delivery services. Chambers, 476 Mass. at 102; Schwann, 813 F.3d at 438-439. Requiring motor carriers to use employeesthe provision of services likely would raise the costs of providing such services. Chambers, 476 Mass. at 103; Schwann, 813 F.3d at 438. Moreover, both courts observed that the fact that Prong B was unique among state independent contractor classification standards contravenes the congressional goal of avoiding “a patchwork of state service-determining laws . . . that determined were better left to the competitive marketplace.” Schwann, 813 F.3d at 438; Chambers, 476 Mass. at 103. Notably, neither the SJC nor the First Circuit expressly held that Prong B is preempted by the FAAAA in all cases involving motor carriers involved in the transportation of property. Rather, the courts held that Prong B was preempted as the plaintiffs proposed to apply it in the particular cases at issue.

Equally important, neither court held that the FAAAA preempted the IC Statute entirely. Instead, the courts severed Prong B from the IC Statute and remanded the cases to the lower courts for findings regarding Prongs A and C. In other words, the courts held that the defendants did not have to prove that the delivery drivers at issue provided services outside their usual courses of business. On the other hand, the courts held that the defendants must prove that the delivery drivers at issue were (1) free from direction and control under their contracts and in fact, and (2) customarily engaged in an independently established trade, occupation, profession, or business. To do this, the SJC’s and the First Circuit’s holdings and reasoning, while persuasive, do not have binding effect outside of Massachusetts or the First Circuit’s jurisdiction includes .
Dispute Resolution
Resolving neighbor conflict: Getting the parties to the table

BY JEANNE M. KEMPTHORNE

Our civil litigation system offers poor and middle class people little or no prac- tical access to the courts to resolve dis- putes that have a huge impact on their lives. Better dispute resolution services can and should be deployed to help address neighbor conflicts that make life almost unbearable for many, who, as a practi- cal matter, have nowhere to turn except to the police. We in the bar association should take a leading role in developing a delivery system to bring the many benefits of dispute resolution services to meet this pressing need.

One enormous swath of the land- scape of human relations and therefore conflict is occupied by the relationships between people who live close together, either as neighbors, co-tenants, members of a condominium association, family members, or roommates. Living without chronic distance of people turns out not to be so easy. Conflicts escalate very quickly over seemingly minor squabbles and, for many, end only with a dial- back. People, even siblings, stop speaking to each other. People quickly become hypervigilant about every dis- turbance, every noise, and every failure to abide by the rules. Distrustful, disem- power, or feel vindicated, harassed, aggravated, angry, embarrassed — but not necessar- ily deterred. Not much is accomplished by deploying the stressed-earth tactic of calling the police, but it assuredly signals a point of no return to cordial neighborliness.

The need for a different approach is clear. The answer, in my view, is not to make the process for settling disputes more and more affordable and accessible. Nor, is it to encourage neighbors to call the po- lice more often. The answer is to make efficient, productive, preferably transfor- mative dispute resolution services widely available. Neighborhood ombudsmen, mediation, and facilitation services all offer resources that enable people even hitting the relationship reset button, cheaply, quickly, and in a face-saving way, which resort to the police and the courts does not.

The potential to actually restore re- lationships and to establish agreements for how conflicts will be addressed in the future is far greater in mediation than in litigation or in calling the police. I have mediated cases among warring neigh- bors for over two decades and the hours from refusing to be in the same room together to spontaneously apolo- gizing. In almost 35 years as a litigator, I have never once seen parties to litigation emerge from a courtroom arm in arm, apologizing for past insults. I’m sure my experience mirrors most of my col- leagues’. The fact is: a system that des- ignates winners and losers is not likely to improve relationships that are not easily severed.

Why hasn’t a system of neighbor dis- ppute resolution emerged from the huge need? One problem is that the public is not generally aware that mediation is available to address neighbor conflict. And, if one party to the conflict does consider mediation, the problem then is how to get the other party to participate. Litigation, for all itsills, does provide the necessary leverage to clear the absence of litiga- tion, can it be done?

There are some contexts in which the parties to conflict could readily be steered to try mediation, but for various reasons, mediation has been overlooked or underutilized as a tool. For example, condominiums could adopt mediation as the system of first resort to resolve dis- putes among unit owners or owners and the board, but most in Massachusetts do not and there are at least two reasons for this. One, boards and property manag- ers tend to favor the in teremum effects of assessed penalties and fee-shifting litigation. Two, current Massachusetts law does not explicitly authorize condo- minium documents even to include me- diation as an option, much less require it. A bill was introduced last year to address this problem, but died in committee. One hopes a similar bill will gain better trac- tion this session to bring Massachusetts in line with many other jurisdictions that recognize that mediation is an important tool in condominium management. Prop- erty managers of larger condominium complexes similarly could steer neighbors in conflict to mediation if it were readily available.

In other neighbor contexts, there is no obvious mechanism for bringing the parties to the table unless litigation has been commenced, the specter of litigation is looming, or some public agency gets involved in the dispute. I think more could be done. Cities and towns could provide neighborhood ombudsmen and refer complaining constituents to me.
The act is premised upon “a system of public nuisance; reasonably regulate public conduct; and (2) restrict the total number of marijuana establishments, to less than twenty percent of the number of off-premises alcohol licenses issued in the municipality, or (3) restrict the commission of any category of marijuana establishments to less than the number of medical marijuana treatment centers authorized to conduct the same type of activity as each coparticipant in the municipality. See G.L.c. 94G, § 3(a)(2).

These types of ordinances or bylaws have the potential to severely limit or prohibit marijuana establishments in an opt-out municipality — if enacted by “a vote of the voters.” This is separate from the initiative petition procedures required for on-site consumption at certain marijuana establishments. See G.L.c. 94G, § 3(b).

The phrase “by a vote of the voters” presents ambiguity and creates untoward debate as opposed to uniformly — in regulation. Under Massachusetts law, ordinance and bylaw initiatives are generally adopted by the local legislative body (e.g., approval by town meeting or passage by city council). If a local government (mayor, not by the registered voters within in the municipality. See, e.g. G.L.c. 40A, § 5 (involving requirements for enactment of zoning ordinances and bylaws). What the phrase “by a vote of the voters” opens the realm of possibilities, creating questions, among others, as to: whether a referendum vote initiated by a registered voter can be required to propose a referendum vote, if required, can delegate action to the local legislative body or instead requires affirmative approval of a ballot question to be submitted to the voters. In what extent, the local legislative body has a role in enacting an ordinance or bylaw follows existing state law for adopting ordinances or bylaws.

This uncertainty in how a municipalit-
Massachusetts’ public schools are ranked the best in the nation, but how do you keep that competitive edge? And how do you make sure every child can take advantage of it all schools? To attain those goals, it’s increasingly important that schools be able to take advantage of information technology funds. DCPS has also cited it’s also critical that they be able to do this cost-effectively. The Massachusetts School Building Authority (MSBA), a quasi-independent government authority that is overseen by a seven-member board of directors chaired by State Treasurer Deborah Goldberg, is partnering with the Massachusetts Department of Elementary and Secondary Education (DESE) and the Massachusetts Office of Information Technology (MassIT) to fund information technology upgrade projects in public schools across the commonwealth to help meet the challenge. The MSBA program will work with the Massachusetts Department of Elementary and Secondary Education (MassIT) to establish an IT grant program that would be used to provide “grants, loans, and/or assistance for such projects or skill, (3) provide students access to technology upgrade projects in public school districts in the commonwealth, as a result of this collaboration will enable students to take advantage of information technology funds, and to do it with grants from the DCPS and/or zero percent interest loans from the MSBA that leverage Federal Communications Commission (FCC) rate rebates. The solution had to be practical (the average amount needed to fund the cost of a school’s IT infrastructure could not support the cost of hiring bond counsel to manage and opine on the legality of a bond), legal (allowed under the MSBA enabling statute) and immediate (the program needed to move forward as quickly as possible). The solution was the MSBA IT Loan Program, which is structured as follows:

1. The MSBA will provide zero percent interest loans to applicants to pay for IT infrastructure on the basis of need as determined by DESE.
2. The loans will be limited to DESE approved projects that have a total estimated IT-infrastructure cost of at least $10,000 but no greater than $2.5 million.
3. $10 million will be made available for loans each of the next five years, beginning in FY 2017-2022. The total amount available will be $50 million in a rolling five-year period.
4. Loans will be made using funds that are available for general use because they are not classified as “restricted” under the requirements established by the General Accounting Standards Board.
5. MassIT will determine the total cost of procuring and installing IT infrastructure for each approved project.
6. Borrower applicants will provide the MSBA with all required appropriation documentation and will sign a loan agreement with the MSBA. Each agreement will conditionally assign all loan proceeds to MassIT and will include a provision that allows the MSBA to intercept the borrower applicant’s state aid if a loan payment is not made.
7. The form of note used by a district will be submitted under the State House note service for certification by the districts. The note used by a district is overseen by the Division of Accounting of the Commonwealth of Massachusetts and the Division of Local Services in the Massachusetts Department and will indicate that the certification service is attractive because it does not require an official statement or full disclosure. However, the director of the Division of Accounting in the laws relating to municipal indebted- ness have not been complied with or if it appears that the proceeds of the note are not be used for the purpose specified in the vote authorizing the loan.
8. MassIT will use the loan proceeds to make direct payments to IT infrastructure providers.
9. When the work is completed, MassIT will apply for and collect available e-rate reimbursements from the FCC and return those rebates to the borrower applicants.
10. Borrower applicants will pay all amounts due the MSBA within the terms of the loan agreement.

The DCPS will soon begin approving infrastructure IT projects and the MSBA will concomitantly begin loaning funds to approved applicants. Everyone involved with the MSBA and the DCPS program is excited by the combined potential of the DCPS IT Grant Program and the MSBA IT Loan Program’s potential. State Treasurer and MSBA Chairperson Deborah Goldberg remarked that the MSBA is “excited to collaborate with DESE and MassIT through this loan program; by making these loan funds available to schools across the state, the MSBA is providing assistance for much needed IT infrastructure improvements for the thoughtful use of technology to support teaching and learning.” Similarly, Governor Charlie Baker commented that “in order to provide a world-class education for our students and educators need access to 21st century technology [and] I’m thrilled that our agencies have partnered to upgrade school technology infrastructure for the benefit of our students.” Karthik Viswanathan, the head of MassIT’s Office of Municipal & School Technology, indicated that “MassIT is … happy to help schools leverage the strength of the commonwealth at the local level by providing expertise and economies of scale.” The result of this collaboration will enable our teachers and our students to reap the myriad benefits of a digitally driven 21st century education.
In August 2016, the Massachusetts legislature passed the Pay Equity Act, amending its prior equal pay law. But will it actually do what its stated purpose of establishing pay equity is? Or is it just a symbolic gesture designed to score political points? Does the new law have a stated purpose of establishing equal pay for comparable work? If so, what is it? This article will look at the new Pay Equity Act, how we got here, and where we are likely to end up.

It’s long been illegal for Massachusetts employers to pay women less than men (or men less than women, for that matter) for comparable work. In fact, Massachusetts was the first state ever to implement an equal pay law, with the passage of the Massachusetts Equal Pay Act in 1945. Congress took a bit longer, passing its Federal Equal Pay Act in 1963, and of course the following year saw the passage of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination — including discrimination with regard to pay — on the basis of gender. So why is it that, over 70 years after the state outlawed pay discrimination, women, as a whole, still do not earn as much as their male counterparts?

There are many different theories about the answer to that question, but one contributing factor is that, until recently, the term “comparable work” was defined fairly narrowly under state law. The preeminence Massachusetts case interpreting the Massachusetts Equal Pay Act is Jancey v. School Committee of Everett (Massachusetts Supreme Judicial Court, 1995). In 1989, female cafeteria workers sued Everett Public Schools under the Equal Pay Act, alleging that they performed work comparable to the work performed by the school’s custodians, and therefore, the cafeteria workers should receive pay equal to that of the custodians. At the time the lawsuit was filed, the hourly rate of the cafeteria workers ranged from $4.44 to $6.85 per hour, while that of the custodians ranged from $10.76 to $12.73 per hour. Notably, at the time the lawsuit was filed, Everett Public Schools had never employed a male cafeteria worker and had never employed a female custodian.

The trial judge found in favor of the cafeteria workers, finding that the work performed by the cafeteria workers was, in fact, comparable to the work performed by the custodians. Specifically, the positions required no prior experience, training or education; they both involved exposure to extreme temperatures; both positions required work with various chemicals/cleaning agents and the positions required a similar level of physical and mental exertion. The plaintiff argued that the trial court’s decision, however, and established a new two-part test for demonstrating “comparable work” that responds to concerns that the trial court’s decision was too narrow. The new test required employers to prove that the positions “share comparable skill, effort, responsibility, and working conditions” and that the jobs do not “differ in content.” Thus, under this test, employees could prevail only if they proved they performed tasks that were less likely to produce a particular sex the exact same job as they did.

Fast forward to 2016, where the persistent gender pay gap was front and center in the media, in part due to the presidential election. Several states passed pay equity legislation last year, including Massachusetts. Recognizing the limitations imposed by the SJC on Massachusetts’ existing pay equity legislation, the Massachusetts legislature broadened the scope of the Equal Pay Act, amending the statute to provide a more expansive definition of “comparable work.” Under the new law, “comparable work” is defined as “work that is substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions: provided, however, that a job title or job description alone shall not determine comparability.” There is little doubt that had this standard been in place when Jancey was decided, the result would have been very different. Still, while the law removes the ambigu- ity surrounding whether it applies only to women in the workforce, the law itself creates new ambiguities, such as what constitutes “substantially similar” skill, effort and responsibility. Compare a management-level engineer with a management-level accountant. To the extent both are tasked primarily with management responsibilities, versus more hands-on engineering or accounting work, one could make the argument that the two management positions require substantially similar skill, effort and responsibility and are performed under similar working conditions. If employers have more hands-on salaries across different departments, compliance with the law may turn into a logistical nightmare.

The law does acknowledge that there may be valid reasons that a man and a woman may be paid differently for doing the same job, but they are limited to the following: 1) seniority (but the law explicitly prohibits taking into account FMLA leave, parental leave, or leave due to pregnancy-related condition when calculating seniority); 2) merit systems (the application of which raise their own nondiscrimination issues); 3) systems of measuring earnings by “quantity or quality of produc- tion, sales or revenue” (i.e., piece work or commissions-based compensa- tion); 4) geographic location of the job; 5) education, training or experience, but only to the extent those factors are “reasonably related” to the job; and 6) travel that is a “regular and necessary part of the job.”

Another significant provision in the new law prohibits employers from requiring applicants to reveal their wage or salary history or to seek wage or salary history from an applicant’s current or former employers. The rationale is that if women are underpaid due, at least in part, to institutional discrimina- tion, basing starting pay on what women were earning in their last job will only serve to perpetuate the discrimina- tion. For example, if a woman and a man apply for the same position, and the female applicant had been paid $40,000 per year for that job while the male applicant had been paid $50,000 per year for that same job, the employer is likely to offer the female applicant a lower starting salary than the male ap- plicant. One way to minimize the im- pact of prior discrimination on future employment is for employers to base starting pay on what the job is worth to them, not on what they can convince an employee to accept.

When I discuss this provision with HR professionals, I am frequently asked, “But can we still ask what an employee’s salary expectations are, right?” At this point, asking an appli- cant about salary expectations does not violate the letter of the law, but it may violate the spirit of the law. After all, a person who has been paid less is likely going to have lower salary expectations than a similarly-qualified person who has been paid more for doing the same work. But before the law goes into ef- fect on July 1, 2018, we will likely re- ceive some further guidance from the Attorney General’s office on this point. The AG’s office will be able to issue regulations interpreting the law, and such regulations may very well de- fine “seek the wage or salary history” to include asking questions about an ap- plicant’s salary expectations.

The law also prohibits employers from requiring that employees refrain from discussing or disclosing informa- tion about their own wages or other employees’ wages. The National Labor Relations Act has long protected em- ployers’ right to discuss their own wag- es with coworkers, but there previously had been no protection for sharing the wages of others. In addition, the NLRA only applies to non-management em- ployees; Massachusetts’ Pay Equity law applies to all employees. The idea is that employees who are free to dis- cuss their wages will be more likely to know whether their equal pay rights are being violated and thus better able to assert their rights under the law.

Employees under the new law will have three years to file any lawsuit al- leging violation of the Pay Equity law (versus the prior law’s one-year stat- ute of limitations), and, unlike in other complaints of discrimination, employ- ees are not required to file an admin- istrative charge with the Massachusetts Commission Against Discrimination before pursuing their claims in civil court. In addition, the law establishes an affirmative defense for employers who complete a good-faith self-eval- uation of their pay practices and demon- strate “reasonable progress” toward eliminating any wage differentials.

With an effective date of July 1, 2018, the law will be a while before we can measure the effect of this new law. Will the law achieve its purpose? Only time will tell. In the meantime, employers should begin work now to identify any areas of concern with respect to pay disparities so that it can work to be in compliance with the law when it goes into effect next year.

Brandon H. Moss is a partner at Murphy, Hesse, Toomey & Lehane LLP in Quincy, where he maintains a practice in public law, litigation, and employment law.
How does the legal system determine whether an employer’s adverse decision is allegedly resulting from neutral factors, might actually represent discrimination illegal under G.L.C. 151B? Will a jury decide the question of whether the asserted reason was a pretext, or does defendant have the burden of showing its absence? Does the non-moving party, normally the plaintiff, have the burden of showing a genuine issue of material fact on the question or will it be resolved via summary judgment? And at summary judgment, is it the employer or the employee who has the burden of showing that the employer’s asserted neutral justifications for its adverse decision are/are not truly the real reasons?

For decades, plaintiffs whose cases have lacked direct, explicit evidence of discrimination have survived summary judgment under the familiar McDonnell Douglas Corp. v. Green burden-shifting paradigm: If an employee is a member of a protected class, performs her job at an acceptable level, and experiences an adverse job action, and the employer articulates a legitimate, non-discriminatory reason for the adverse action, the employee can defeat summary judgment by producing evidence that the employer’s reason claimed is “pretext.” Questions that have dogged the lower courts under this formula include: What sort of evidence suffices to show pretext? At summary judgment, which party has the burden of making the requisite showing under Mass.R.Civ.P. 56? Does the non-moving party, normally the plaintiff, have the burden of showing a disputed issue of material fact on the question of pretext, or does defendant have the burden of showing its absence?

In a wide-ranging and in-depth opinion, the SJC in Bulwer v. Mount Auburn Hospital addressed these questions in the context of a race/national origin discrimination claim brought by a black man of African descent from Belize. The plaintiff held a non-U.S. medical degree and had 13 years’ experience practicing medicine internationally, but to improve and were not summarily dismissed. Second, complaints about poorly-performing Caucasian doctors had been ignored for extended periods, or permanently, in contrast to Bulwer’s treatment (termination immediately after consideration of his reviews).

The SJC’s decision in Bulwer v. Mount Auburn Hospital initially addressed these questions in the context of a race/national origin discrimination claim brought by a black man of African descent from Belize. The plaintiff held a non-U.S. medical degree and had 13 years’ experience practicing medicine internationally, but to improve and were not summarily dismissed. Second, complaints about poorly-performing Caucasian doctors had been ignored for extended periods, or permanently, in contrast to Bulwer’s treatment (termination immediately after consideration of his reviews).

Fourth, the hospital failed to follow its own procedures for terminating members of its residency program. Finally, a number of statements in Bulwer’s evaluations appeared to reflect stereotypical views that foreigners and black men should “know their place.” These included such comments as Bulwer was “too confident for his own good,” and “intern is not supposed to be smart.” Because a jury could find that these factors rendered the evaluations either not believable, not the real reasons for the hospital’s decision, or a product of illegal animus, the court held that summary judgment was precluded.

The SJC’s decision in Bulwer v. Mount Auburn Hospital initially addressed these questions in the context of a race/national origin discrimination claim brought by a black man of African descent from Belize. The plaintiff held a non-U.S. medical degree and had 13 years’ experience practicing medicine internationally, but to improve and were not summarily dismissed. Second, complaints about poorly-performing Caucasian doctors had been ignored for extended periods, or permanently, in contrast to Bulwer’s treatment (termination immediately after consideration of his reviews).

The SJC also looked more broadly at how an employer’s overall treatment of the employee can defeat summary judgment on a high billing rate by partners, including partners who would not work with her). As in Bulwer, plaintiff pointed to evidence that different evaluation standards were applied to employees inside and outside the protected class. Plaintiff was criticized for lack of consistency in plaintiff’s section. In another category, the court looked more broadly at the overall atmosphere for women at the firm, including not only complaints about other instances of gender discrimination by plaintiff’s supervisor, but also data gathered by a firm consultant on the treatment, job satisfaction, and promotion rates of male and female lawyers at the firm and especially in plaintiff’s section.

The court also ruled that plaintiff had adduced sufficient evidence to go to the jury on the issue of whether her demotion was retaliatory. That was so even though she had been demoted two and a half years after she had engaged in the protected activity of making complaints against her supervisor. According to the court, the extensive history of disparate treatment she experienced that began right after she made her complaint could be viewed as a pattern of retaliation culminating in the later demotion.

Bulwer and Verdrager were certainly not written on a blank slate. In previous cases, the SJC has outlined elements of proof of G.L.C. 151B claims. Past cases have discussed proof of pretext, including how evidence of stereotyped thinking helps prove pretext (e.g., Lipchitz v. Raytheon; Mass. Electric Co. v. MCAD), and how an employer’s overall treatment of the protected class, or treatment of comparators outside the protected class, can also show pretext (e.g., Matthews v. Ocean Spray Cranberries, Inc.). However, before 2016, the court had not previously laid out in painstaking detail the contours of an omnibus pretext analysis. It has now done so in Bulwer and Verdrager. These cases provide a road map for practitioners that illuminates many of the common forms pretext (and workplace bias) can take and allows us to sharpen our thinking — and plan our summary judgment practice — accordingly.

Ellen J. Messing is a partner in the Boston firm of Messing, Rudovsky & Welky, P.C., which concentrates its practice in plaintiff-side employment and labor law. Ellen authored a brief on behalf of the Massachusetts Lawyers Association in support of plaintiff-appellant Kamee Verdrager in the Bulwer v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. SJC case discussed in this article.
Rules and responsibilities: A review of employment practices for domestic workers

BY STESHA EMMANUEL

The often recited proverb that it “takes a village to raise a family” is no less applicable in today’s modern society than it has been for centuries. Today, “villagers” are often domestic workers who provide in-home services to private employers. Until recently, those domestic workers who have been underpaid, overworked and exposed to discrimination and harassment have had little recourse. In order to understand the vulnerability of domestic workers, one need only look back as recent as 2012 when a Massachusetts couple paid an immigrant named Maricela $3,000 for six years of service. The enactment of the Domestic Workers’ Bill of Rights in Massachusetts, the fourth state in the nation to directly address the issue, seeks to protect those “villagers.” The law took into effect on April 1, 2015.

The Massachusetts Domestic Workers’ Bill of Rights is comprehensive, differing from other rights available to employees in Massachusetts, and expands the duties and obligations of employers. Consequently, there are a number steps, if neglected, that could expose current and future employers to litigation.

I. Defining Domestic Workers

Domestic workers are individuals, including independent contractors, who receive compensation from an employer to provide any service of a domestic nature within a household. These services include babysitting (over 16 hours weekly), childcare, housekeeping and in-home caregiving. While the statute protects domestic workers regardless of immigration status, the statute does not apply to domestic workers employed through a state-regulated staffing agency.

II. Mandatory Statutory Obligations

At the outset of employment, the employer must provide domestic workers with a Notice of Rights that outlines all applicable state and federal rights. You can find one entitled “Legal Rights of Domestic Workers” on the Massachusetts Office of the Attorney General’s website. It is a “must have” for domestic workers and their employers. It provides a comprehensive yet easily understandable summary of the legal issues attendant to domestic employment, such as payroll and timekeeping requirements, job evaluations, minimum wage and overtime compensation, rest periods, pay deductions, public benefits (social security income taxes, unemployment benefits), sick time, vacation and other leave, phone and internet access, privacy and freedom to come and go, injuries at work, protection for immigrant workers, special protections for live-in workers, and the impermissibility of discrimination and retaliation.

In concert with the Notice of Rights, the employer must also provide a domestic worker who works 16 or more hours a week with a written agreement that outlines information about compensation, work schedule and job duties, leave and termination, and other topics listed in the Notice of Rights. Both documents must be produced in a language that the domestic worker understands and signed by both parties. Failure to execute a written agreement will expose the employer to future litigation about the terms of the employment, with the scale tipping towards the domestic worker.

For the purposes of this article, the following provisions will be highlighted: (1) minimum wage and overtime compensation; (2) rest periods; (3) workers’ compensation insurance; and (4) discrimination.

1. Minimum Wage and Overtime Compensation

The Domestic Workers’ Statute clarifies that domestic workers must be paid at least the Massachusetts minimum wage. As of January 1, 2017, the state minimum wage rose to $11.00 per hour. Domestic workers must also be paid one and one-half times their regular hourly rate for all hours worked in excess of 40 hours of each work week. Employers should recall that the Massachusetts Wage and Hour Over-time Statutes allow employers who are not appropriately compensated to back pay, treble damages, attorneys’ fees and litigation costs.

2. Rest Periods

A domestic worker who works 6 or more hours in a day has the right to a 30-minute meal or rest break every workday. If a domestic worker is on duty for less than 24 hours, all meal, rest, and sleeping periods must be paid unless the domestic worker has no work duties and is allowed to leave during those times. If a domestic worker is required to be on duty for a period of 24 consecutive hours or more, all meal periods, rest periods and sleep periods constitute working time, unless the domestic worker and employer have previously entered into a written agreement to exclude up to 8 hours.

Whether rest periods are paid or unpaid should be negotiated at the time of hire, but generally breaks of less than 20 minutes must be paid. During rest periods, the domestic worker must be free of all work duties and be allowed to leave the workplace. A domestic worker may choose to work during a rest period, but if that happens, the domestic worker must be paid.

A domestic worker employed for 40 or more hours per week must be given at least one full day (24 hours) off each week and 2 full days (48 hours) off each month. Such a domestic worker may agree to work during a previously designated rest period provided that the domestic worker and employer sign an agreement which specifies the rest period the domestic worker agrees to work, is written in language easily understood by the domestic worker, and is executed prior to the commencement of services during the previously designated rest period.

3. Workers’ Compensation Insurance

All employers in Massachusetts are required to carry workers’ compensation insurance and this includes employers of domestic workers who work over 16 hours weekly. The absence of workers’ compensation insurance can result in civil fines or criminal penalties. For example, by statute, if a domestic worker is hurt on the job and the employer does not carry workers’ compensation insurance, the employer becomes, in effect, strictly liable for the worker’s injuries. The cost of “nanny insurance” is a small price to pay to avoid a potentially much bigger loss and penalties.

If a domestic worker is hurt on the job but only sustains medical injuries for less than five days, employers should report the incident directly to their workers’ insurance company to cover medical costs. If a domestic worker is totally or partially disabled due to a work-related injury and unable to work for more than five days, like for all other employees, the employer must complete a Form 101 with the Department of Industrial Accidents and the domestic worker may be eligible for lost wages and medical costs.

4. Discrimination

Given the poor treatment of domestic workers in the past, the Legislature carved out special provisions to allow domestic workers to level the balance of power. Domestic workers may bring a claim under G.L.c. 151B, § 4 for discrimination based on sex, sexual orientation, gender identity, race, color, age, religion, national origin or disability that results in an hostile or offensive working environment or unreasonably interferes with the domestic workers’ performance. Domestic workers may utilize Chapter 151B even if the employer has fewer than six employees, the threshold typically required for MCAD jurisdiction.

III. Looking Ahead

Employers and domestic workers alike are encouraged to carefully review the Notice of Rights of Domestic Workers and seek guidance from the Massachusetts Office of the Attorney General and private attorneys with any questions they may have. The legal rights of domestic workers have been expanded and many workers and employers are not yet aware of the new legal landscape.

Stesthesia Emmanuel is an attorney at Todd & Weld LLP and concentrates her practice on employment litigation, representing employers and employees, as well as business and civil litigation. Ms. Emmanuel currently serves on the board of directors for the Massachusetts Black Lawyers Association and the Women’s Bar Association of Massachusetts.
MASSACHUSETTS LAWYERS JOURNAL | MARCH/APRIL 2017

Announcements

NORFOLK

MBA member Susanna DeSantis Payzant has been promoted to partner at Lane, Lane & Kelly, LLP in Braintree. Payzant specializes in the area of real estate law, including real estate closings, purchase and sale agreements, and representation of buyers, sellers and lenders at closings and short sales. She joined the firm in 2010.

SUFFOLK

Eric Sigman has joined Laredo & Smith LLP as a partner to counsel clients in the areas of business law, transactional corporate work and franchise law. Sigman focuses his practice in business law, with a particular concentration on franchise law, guiding clients through corporate formation, capitalization, succession planning, commercial leasing, and mergers and acquisitions.

WORCESTER

Mary L. Nguyen has joined Todd & Weld LLP as a litigation associate and will concentrate her practice on commercial litigation and criminal defense matters. Prior to joining the firm, Nguyen prosecuted 23 jury trials as a Suffolk County assistant district attorney. She is a 2014 graduate of Northeastern University School of Law.

Christine Anthony announces the relocation of her law office to 290 West Main Street, Suite 7, Northborough. She continues to focus her practice in all areas of domestic relations, including litigation, mediation, conciliation and appeals.

MassBar Bulletin publishes updates from Massachusetts Bar Association members. Information is listed alphabetically by county. Email your announcements to bulletin@massbar.org.

NOTABLE & QUOTABLE

“I think if there’s a good attorney present, there’s no way a client is going to be shortchanged.”
— MBA President Jeffrey N. Catalano

Catalano was quoted in the Washington Post (March 12) on his thoughts on having effective counsel in medical malpractice cases in an article about whether doctors and hospitals should apologize for medical mistakes.

“SJC hires N.C. lawyer to run daily operations of state court system.”
— MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy

Healy provided analysis of a recent report issued by the Council of State Governments Justice Center in his “Healy on the Hill” column.

“McGovern: Strong offense not best defense for Aaron Hernandez.”
— Peter Elikann, former chair of the MBA’s Criminal Justice Section

Elikann offered his thoughts on criminal defense strategies when speaking to a jury.

“I-Team: Calls for ethics investigation into secret MBTA take-home perk.”
— MBA member Stephen J. Weymouth

Weymouth was interviewed for an investigative piece on a hidden take-home car perk.

“Due process questions in disciplinary cases linger.”
— MBA members Martin R. Rosenthal, Howard M. Cooper and George A. Berman

They provided their thoughts in a piece about due process for lawyers accused of ethical breaches. A 2005 report issued by the MBA’s Task Force on Lawyer Discipline is also referenced in the story.

“Report of Justice Center enters debate on Beacon Hill.”
— MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy

Healy provided analysis of a recent report issued by the Council of State Governments Justice Center in his “Healy on the Hill” column.

Quoted in the media? Let us know. Email JScally@MassBar.org.
LEAP

Legal Practice Management Software

Contact us for a free demonstration

844-LEAP-USA | info@leap.us | www.leap.us

- Practice Management
- Document Production
- Document Management
- Time, Disbursements & Billing
- Trust Accounting
- Automated Legal Forms