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MASSACHUSETTS
LAWYERS JOURNAL

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VOLUME 22 | NUMBER 5 | JANUARY 2015

PRESIDENT'S VIEW
MARSHA KAZAROSIAN

A prime time for justice

You cannot turn on the TV or read the paper without seeing something about Dzhokhar Tsarnaev or Aaron Hernandez. Both are defendants in notorious criminal cases that hit close to home.

Tsarnaev is a college student accused of perpetrating an unspeakable tragedy: the Boston Marathon bombing, a heinous act of terrorism that impacted countless victims and families, many of whom are still struggling today. Hernandez is a former New England Patriot facing multiple murder charges, but the notoriety of his case is tied more to his fame as a local sports star than the no-less-senseless loss of life.

They are different cases to be sure. But what they share in common is that, as of press time, both are going to trial this month.

In some ways it seems as if both Tsarnaev and Hernandez have already been on trial with the wall-to-wall media coverage surrounding their cases since their arrests. We saw a similar media frenzy in 2013 before, during and after the federal trial against James "Whitey" Bulger. We've had no shortage of high-profile cases of late. Each time a case gets wide exposure, it offers a showcase for our system of justice. It ➤2

Get ready for the new *voir dire* law

BY PETER ELIKANN

This is an overview of the new voir dire *law, which goes into effect on Feb. 2. Visit the MBA's Voir Dire Resource Center at www.massbar.org/voirdire, for voir dire protocols, alerts and other useful information.*

Last August, Massachusetts joined the majority of states when Gov. Deval L. Patrick signed into law Chapter 254 of the Acts of 2014, which permits *voir dire* conducted by attorneys or self-represented parties during empanelment of criminal and civil trials in the Superior Court. The Massachusetts Bar Association advocated strongly for this law, which also included a provision allowing attorneys to suggest a monetary amount for damages suffered by a plaintiff in a civil trial.

The section of the law governing *voir dire* stated that judges could set reasonable limitations on questions and require pre-approval of such questions, but the legislation left it to the courts to promulgate the guidelines.

A committee made up of various members of the bench and bar ➤8

Senate presidency a new role for Rosenberg

BY MIKE VIGNEUX

Senate Majority Leader Stan Rosenberg

Every great recipe starts with the right ingredients. Perhaps no one on Beacon Hill knows that better than Senate Majority Leader Stan Rosenberg, who is expected to be voted in as the new Senate president when the legislative session kicks off on Jan. 7.

Rosenberg, a cooking enthusiast and collector of cook books, is known at the State House for his famous tomato sauce. Each fall he handpicks all his ingredients fresh from the fields of western Massachusetts. He freezes them so he can make his highly sought-after sauce and homemade pasta even in the middle of a bone-chilling New England winter. The sauce garnered so much acclaim that the *Boston Globe* published the recipe in September 2005.

"I like to cook, but rarely get a chance to do that anymore," says Rosenberg, who represents the Hampshire-Franklin District, which includes Amherst and Northampton.

His time in the kitchen may be cut back even more with his forthcoming presidency seat in the state Senate. Not only will Rosenberg be moving into a new role, he'll also be working with a new governor in Charlie Baker when a new administration takes over in January. Rosenberg has served as a state senator since 1991 and has worked his way up the leadership ranks. A knowledgeable legislator that has earned the respect of his colleagues, Rosenberg possesses the key professional ingredients to produce a winning recipe for leadership of the Senate.

'Dean of the State Senate'

As the longest tenured member of the Upper Chamber with 23 years of service, Rosenberg has earned the honorary title of "Dean of the State Senate." An advocate for education and social justice for all, he has served as president pro tempore, assistant majority leader and chairman of the Senate Committee on Ways and Means. In 2001 and 2011 he also served as Senate chair of the Joint Committee on Redistricting.

A resident of Amherst, Rosenberg has lived in the Pioneer Valley for more than 40 years. His district is made up of 24 communities: 17 in Franklin County, six in Hampshire County and one in Worcester County. He is a graduate of Revere High School and UMass Amherst.

Rosenberg is in position to claim the highest seat in the Senate with the departure of outgoing Senate President Therese Murray, who did not run for reelection. After a six-month period of internal conversations about what the future of the Senate might look like, Rosenberg was given the opportunity to become the new leader.

"It's a significant responsibility and opportunity. I am fully aware and take it with a great deal of seriousness," says Rosenberg. "We have an opportunity to build an agenda in the Senate, work with the speaker and in this case we now have a divided government with a Republican governor and a Democratically controlled legislature."

While putting together an agenda in the Senate is still very much in the discussion stage at this point, Rosenberg notes that the state's economy will be at the center of it.

"I'm looking forward to continuing on the path of increased transparency and engagement both by the members of the Senate and the public in building and maintaining a very robust economy," he says. ➤6

PRESIDENT'S VIEW

Continued from page 1

is a good opportunity for people to see how the system works, to understand the onerous nature of the process, and to be exposed to the grave consequences and duties shouldered by both sides of the "v." But it is also important to understand the significant role that the media has in how these cases are presented to the public.

To be sure, the 24/7 media cycle can have dangerous consequences. Speculation, preconceived notions of guilt or innocence, and rushes to judgment are poisons to our system of criminal justice. How can one ignore the recent revelation from *Rolling Stone* magazine, which cast doubt on the veracity of its own investigative reporting about an alleged rape at a fraternity house at the University of Virginia? Similarly, consider the Boston Marathon bombing victim whom Glenn Beck wrongly accused of being tied to the bombing (and has since filed a defamation suit against Beck). These may be extreme examples, but they nonetheless illustrate the dangers.

As lawyers, we can — and often do — play a role in keeping cases from being overly sensationalized. Any lawyer who has ever served as a legal commentator knows that one of the reasons we're called upon by the media is to put things in proper perspective and to educate the public about the law and process.

But when you represent a high-profile client, your role often expands beyond traditional lawyering; you're not only an advocate, you're a public relations manager, you're a spokesperson, and you're the buffer against conjecture and prejudice.

It's hard enough for any defense lawyer to combat preconceived notions of a client's guilt, but that is exponentially more difficult when the case becomes a media frenzy, and the public becomes the judge and jury. When the matter is ready for trial, it is extremely difficult to identify jurors who have not already been inculcated with information and ideas about the case. This is where *voir dire* is vitally important.

The prosecutors and defense attorneys involved in the Tsarnaev and Hernandez cases know these challenges already. And now that both cases are entering the trial phase, there are more challenges on the way. But trials are what these lawyers have prepared for since the moment they were retained. Trial is when the outside talk should take a backseat to the process inside the courtroom, when the rule of law should speak louder than that noise and when the system should be at its best.

For the media who will ultimately report about interim rulings about evidence or that may appear to favor one side over another, the responsibility to refrain from emotion is paramount. Only the jurors hear and consider the evidence as presented. Only the judge has the tools to weigh and rule on the legal issues. No one else can substitute judgment, and if anyone attempts to do so, they do us all a disservice.

That is not to say that differences of opinion or perspective should not be offered. They should. But they should be offered with integrity and temperance, because the stakes in each of these cases are extreme for the defendants as well as the victims. And as justice is about to get a primetime spot, nothing should contaminate that process. ■

BAR SEEN

Snapshots from around the MBA

PHOTOS BY MIKE VIGNEUX

Young Lawyers host 'Meet and Greet'

The Massachusetts Bar Association's Young Lawyers Division hosted a special reception for new admittees to the bar on Dec. 2, at the Beck Deck in Boston. Attendees had an opportunity to learn more about the MBA and network with fellow members of the legal community. ■

Past Presidents' Dinner

MBA Past Presidents and current leadership gathered at the 2014-15 Past Presidents' Dinner on Nov. 19. ■

PHOTO BY JEFF THIEBAUTH

MASSACHUSETTS LAWYERS JOURNAL

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BUSINESS LAW

BANKING LAW UPDATE

Wednesday, Jan. 14, 8–9:30 a.m., MBA, 20 West St., Boston

FACULTY: *Kevin J. Handly, chair*


KEVIN J. HANDLY

INTELLECTUAL PROPERTY BASICS FOR THE NON-SPECIALIST

Tuesday, Jan. 20, 4–7 p.m., MBA, 20 West St., Boston

Learn the intellectual property law basics required to meet these expectations and to see opportunities and pitfalls — particularly in light of the sweeping changes in the 2012 America Invents Act. Topics will include patents, copyrights, trademarks, trade secrets, IP litigation, and licensing and other business transactions.


STEPHEN Y. CHOW

FACULTY: *Stephen Y. Chow, Esq., program chair; Stacey C. Friends, Esq.; Amanda M. Rettig, Esq.*

CRIMINAL

SUBSTANCE USE, ABUSE AND ADDICTION IN DISTRICT COURT: STRATEGIES AND AN EXPERIMENTAL APPROACH

Tuesday, Jan. 13, 4–7 p.m., MBA, 20 West St., Boston

This program will feature strategies for zealously and effectively representing your clients within the bounds of the law with cases involving substance use, abuse and addiction from pre-arrest to post-conviction, including probation and parole.


RICHARD J. DYER

FACULTY: *Richard J. Dyer, Esq., program chair; Hon. Robert P. Ziemian, Danielle Boland; Michael Glennon, Esq.; Rhonda Smith; Steven W. Tompkins*

GENERAL INTEREST

A DAY IN THE LIFE OF A RISING ASSOCIATE

Thursday, Jan. 15, 4–6 p.m.
MBA, 20 West St., Boston


VICTORIA SANTORRO


TODD TORRES

CO-CHAIRS: *Victoria Santorro, Esq.; Todd Torres, Esq.*

JUVENILE & CHILD WELFARE

CROSSING BORDERS: UNACCOMPANIED IMMIGRANT CHILDREN AND THE ROLE OF COUNSEL

Thursday, Jan. 8, 3–4 p.m., MBA, 20 West St., Boston

LEGAL CHAT
No on-site attendance.

Join us to learn about what brings immigrant children to Massachusetts and the unique legal issues they and their caretakers face. This discussion will cover the basics of special immigrant juvenile status under federal immigration law and the role of counsel representing unaccompanied immigrant children in state and federal proceedings.

FACULTY: *Claire S. Valentin, Esq., chair; Brian R. Pariser, Esq.*

FREE EDUCATIONAL FORUM

OPEN TO NON-MEMBERS

COMMUNICATION, APOLOGY AND RESOLUTION (CARe)

Wednesday, Jan. 21, 4–6 p.m., MBA, 20 West St., Boston

The Massachusetts Alliance for Communication and Resolution Following Medical Injury (MACRMI) and the Massachusetts Bar Association will be hosting an educational forum regarding communication, apology and resolution (CARe) following medical errors. Topics include:

- The CARe program as an alternative to malpractice litigation
- Information about how the program works in Massachusetts
- Hear from attorneys that have participated in the process
- Understand the benefits of the program for you and your clients
- Have your questions answered by a panel of experts


JEFFREY N. CATALANO

FACULTY: *Jeffrey N. Catalano, Esq., chair; George Googasian, Esq.; Kevin Giordano, Esq.; Linda Kenney; Kenneth Sands, M.D., M.P.H.; Alan Woodward, M.D.*

LITIGATION

VOIR DIRE TRAINING: LEARN FROM THE EXPERTS

Tuesday, Jan. 27, 1–5 p.m., MBA, 20 West St., Boston

In February 2015, Massachusetts attorneys will, for the first time, be allowed to question prospective jurors in civil and criminal trials throughout the Superior Court. Be prepared for this historic change by learning how to conduct *voir dire* from experts who have used it successfully.


MARSHA V. KAZAROSIAN


RICHARD P. CAMPBELL

With the passage of Chapter 254 of the Acts of 2014 in August, Massachusetts joins 39 other states that allow some form of attorney-conducted *voir dire*. The new law not only permits attorneys to question potential jurors and screen for bias in Superior Court trials, it also allows attorneys to suggest a monetary amount for damages suffered by a plaintiff in a civil trial. The Massachusetts Bar Association and the Massachusetts Academy of Trial Attorneys advocated strongly for both measures.

FACULTY: *Marsha V. Kazarosian, Esq., program chair; Richard P. Campbell, Esq. Additional faculty to be announced.*

LITIGATION

FEED YOUR MIND — THE MBA'S LEGAL LUNCH SERIES: TAKING AND DEFENDING DEPOSITIONS

Wednesday, Jan. 21, 12:30–1:30 p.m., MBA, 20 West St., Boston

All Massachusetts Bar Association members are encouraged to attend these free lunchtime programs. We gear these programs toward civil litigators of all experience levels, providing an opportunity to participate in a discussion of selected areas of law. This month, speakers will guide an informative discussion on how to take and how to defend depositions.


CRAIG LEVEY


COURTNEY SHEA

FACULTY: *Craig Levey, Esq., co-moderator; Courtney Shea, Esq., co-moderator; Scott M. Heidorn, Esq.; Todd J. Bennett, Esq.*

SEMINAR WITH REAL-TIME WEBCAST

475* ***The number of newly admitted attorneys who completed the Massachusetts Bar Association's Practicing with Professionalism course in 2013–14.***

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2015 COURSES

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March 19—UMass School of Law, Dartmouth
May 13—UMass Medical, Worcester
July 16—MBA, 20 West St., Boston
Sept. 17—UMass Lowell Inn and Conference Center
Oct. 23—Western New England University School of Law, Springfield

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Spreading holiday cheer

The Massachusetts Bar Association celebrates the holiday season








ROSENBERG
Continued from page 1

Criminal justice reform

In addition to the economy, the topic of criminal justice reform is one of many key areas for Rosenberg. In November, he attended a conference on criminal justice reform in San Diego. The conference, "The Justice Reinvestment National Summit: Sustaining Success, Maintaining Momentum," was sponsored by the Pew Charitable Trusts, the U.S. Department of Justice's Bureau of Justice Assistance and the Council of State Governments Justice Center.

Rosenberg was among 450 attendees from 35 states at the conference. Seventeen of those states are significantly engaged in justice reinvestment initiatives, which involve different ways of looking at and spending resources in order to protect public safety. The goals include reducing incarceration and re-incarceration, creating stronger re-entry programs for those that have been incarcerated and reducing the rate of re-entry into the prison system.

In Massachusetts, the Special Commission to Study the Commonwealth's Criminal Justice System recently recommended eliminating mandatory minimum sentences for drug offenses. The MBA has been a long supporter of eliminating mandatory minimum sentences in those cases.

Rosenberg points out that several of the states that are actively engaged in criminal justice reform are known for conservative agendas with strong law and order approaches to public safety programs.

"The states that are aggressively reviewing and repealing them are actually 'red' states. If they can review, revise, repeal and reform, then so can Massachusetts," says Rosenberg. "I'm looking forward to the possibility that with the success in so many other states of reviewing and revising that we can take a page from their book without fear that we'll be compromising public safety."

'Blue Ribbon' report

Housed within the criminal justice reform discussion is the topic of how to improve the challenges facing assistant district attorneys, public defenders and bar advocates in Massachusetts, where compensation rates have changed little in 20 years.

The MBA's Blue Ribbon Commission on Criminal Justice Attorney Compensation released a report in May 2014 that found the salaries of attorneys who work in the state's criminal justice system to be inadequate and inequitable. The report, "Doing Right by Those Who Labor for Justice: Fair and Equitable Compensation for Attorneys Serving the Commonwealth in its Criminal Courts," is the first study conducted on this topic since the MBA's groundbreaking "Callahan Report" in 1994.

Following the release of the report, Governor Deval L. Patrick named the MBA to a commission to study the salaries of assistant district attorneys and staff attorneys of the Committee for Public Counsel Services.

Rosenberg sees this issue fitting into the larger discussion of overall reforms to the criminal justice system.

"I think that this is one of the issues that could benefit by a comprehensive look at the criminal justice budgets, from the courts to the DAs to the defense bar to the jails and houses of correction," he says. "If we look at that whole system and we are able to make the kinds of changes that are happening in other states, we will free up money in the criminal justice budget to invest more wisely and more effectively in other parts of that system's budget."

Voir dire legislation

Starting Feb. 2, Massachusetts attorneys will, for the first time, be allowed to question prospective jurors in civil and criminal trials throughout the Superior Court thanks to the passage last August of Chapter 254 of the Acts of 2014, a measure the MBA strongly advocated for. (See related story, page 1.)

Massachusetts joins 39 other states that allow some form of attorney-conducted *voir dire*. The new law not only permits attorneys to question potential jurors and screen for bias in Superior Court trials, it also allows attorneys to suggest a monetary amount for damages suffered by a plaintiff in a civil trial.

"It made sense to me and I'm glad we were able to get it passed, and I'm hoping that this reform will ensure that people will have quick and fair justice," says Rosenberg. "A compelling case was made and a good bill was put forward and is now law."

Civil legal aid

Rosenberg is also very aware of the need for state funding for programs that provide civil legal aid to low-income residents. This year the MBA will once again co-sponsor the 16th Annual Walk to the Hill for Civil Legal Aid on January 29. Each year hundreds of attorneys participate in this event, which is one of the largest lobby days at the State House.

As he moves into the role of Senate president, Rosenberg suggests that a restructuring of the budget could lead to more funding for civil legal aid as well as other services.

"If we can effectively participate in this justice reinvestment strategy, it opens up the door for all of these types of services to get access to funds that are otherwise now tied up. Let's free up money in the system so that those dollars can flow into areas that are a much better use of that money than some of the ways we're spending it now," said Rosenberg.

Relationship with the legal community

Like his famous tomato sauce, Rosenberg will depend on several ingredients as the keys to his success at the helm of the state Senate. One of the most important ingredients for Rosenberg will be further developing his strong relationships with various constituencies, including those within the legal community.

"The courts are a co-equal branch of government and I respect their responsibilities and their job and will continue to be active with my colleagues, especially the folks on the judiciary committee, to identify opportunities to improve the delivery of swift and fair justice," says Rosenberg. "I'll look to the judiciary chair in the Senate as a source of information and guidance and then to our budget team that will include people working on various aspects of the criminal justice system, including budgets that support the legal community and the courts themselves." ■

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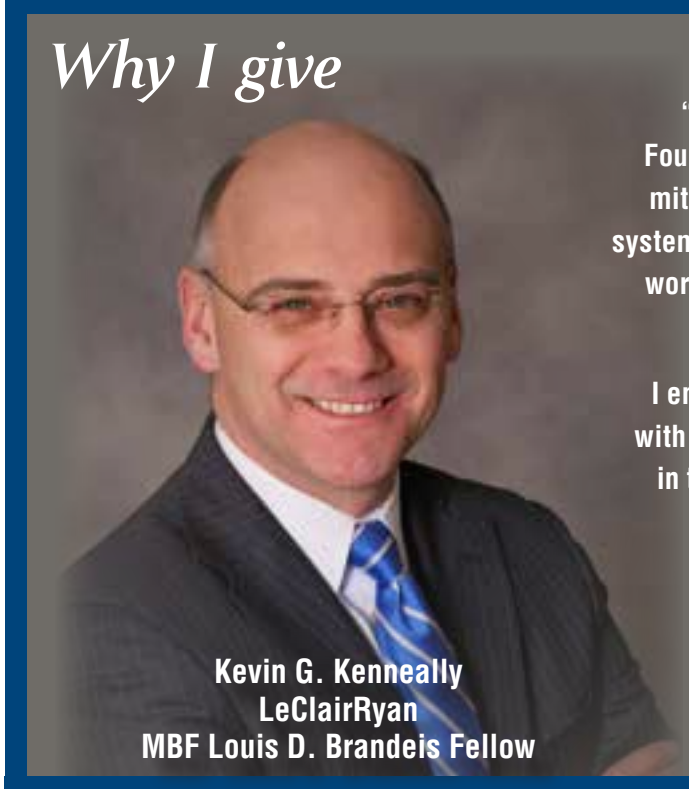

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"LeClairRyan supports the Massachusetts Bar Foundation because it shares our law firm's commitment nationally to provide access to the legal system for those most vulnerable in our society. My work as a trustee was among the most rewarding experiences I've had as a member of the bar.

I encourage members of the MBA to get involved with the foundation. It is so rewarding to take part in the grant process, helping to direct the MBF's resources to worthy nonprofit organizations' programs that provide civil legal services to low-income clients, especially in the areas of housing, domestic violence, immigration status and child advocacy."

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

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MBF IOLTA grant applications now available

Deadline: March 6

The MBF is pleased to announce the availability of applications for the 2015-16 Interest on Lawyer's Trust Accounts (IOLTA) Grants Program. The MBF expects to award approximately $1.8 million to nonprofit organizations for law-related programs that either provide civil legal services to the state's low-income population, or improve the administration of justice in the commonwealth.

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

Funds for these grants are provided by the Massachusetts Supreme Judicial Court's IOLTA Program. The Massachusetts Bar Foundation is one of three charitable entities in Massachusetts that distributes IOLTA funds.

Visit www.MassBarFoundation.org for application materials.

GRANTS AND OPPORTUNITIES

Law students: summer funding opportunity

Deadline: March 13

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

The MBF LIFP, funded by the MBF Fellows Fund and the Smith Family Fund, has two concurrent goals: to give talented students the experience and encouragement they need to continue in the public interest law sector and to provide legal aid organizations with much-needed additional staff capacity for the summer.

All current law students are eligible to apply. For application information, visit www.MassBarFoundation.org.

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

Save the date

MBF 2015 ANNUAL MEETING

Tuesday, March 3
5:30–7:30 p.m.
Social Law Library
John Adams Courthouse Boston

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

www.MassBarFoundation.org

VOIR DIRE
Continued from page 1

was tasked with moving quickly to draft a temporary procedure that would go into effect in February 2015. The resulting Superior Court Standing Order 1-15, issued last month, can probably be considered a work in progress as the committee will continue to work past that date as the Massachusetts bench tests its way through this first time effort.

Judicial discretion remains paramount. Trial judges may not only lead and supervise the *voir dire* and oral examination, but may even employ procedures that could differ from this standing order including the use of written questionnaires.

Visit the MBA's *Voir Dire* Resource Center at www.massbar.org/voirdire, for *voir dire* protocols, alerts and other useful information.

Procedure

- An attorney or self-represented party must file a motion requesting permission to conduct juror interviews. Civil or criminal motion practice must be followed respectively. Civil cases must follow Superior Court Rule 9A requiring that the motion along with the response be filed the earlier of either the final pretrial conference date or 14 days prior to trial. In criminal cases, the motion must be served on the other party one week before filing and the response must be given two business days before the final pretrial conference or, if no final pretrial, then five days prior to trial.
- The motion should identify the general question areas that the moving party plans to ask the jurors. It is understood that reasonably related follow-up questions should be permitted. A response or opposition by the other party to these lines of inquiry may be filed. A judge has the discretion to request that specifically written questions be filed for pre-approval.
- In determining whether to approve or disapprove topics, judges are to be guided by the principle that: (a) jurors should not be exposed, through the *voir dire* process, to extraneous matter that could undermine their impartiality; (b) *voir dire* should move at a reasonable rate that bears some relation to the seriousness of the matter and anticipated length of the trial and consideration for other sessions that might need access to the same jury pool; and (c) the dignity and privacy of each jury must be respected.

Questions that should generally be approved

- Questions and reasonable follow-up questions about a prospective juror's background and experience if relevant to the case should be explored as to how that might affect the juror. Sensitive personal information should be outside the earshot of the other jurors.
- Questions about potential biases about the parties, the claims or issues.
- Questions about the juror's inclination or ability to follow the judge's instructions about the applicable law.

Questions that should generally be disapproved

- Questions that duplicate the questions on any juror questionnaire. However, incomplete answers on a questionnaire or answers that need further elaboration are permitted.
- Questions regarding a variety of personal information including political and religious views and information on past charitable giving, hobbies, recreation, reading and viewing habits, etc. unless they pertain to issues that may arise at trial or may affect the juror's impartiality.
- Questions about a juror's previous service on a jury.
- Questions that are tantamount to instructing prospective jurors on the law.
- Questions that are an attempt to persuade the juror, encourage the juror to prejudge the case or commit to a result or do anything other than remain impartial.
- Questions that require a juror to guess about facts or law.
- Questions that might embarrass or offend the juror or invade privacy.

Prior to *voir dire* the judge shall:

- Give a brief description of the case and related information.
- Give a rudimentary description of legal principles relevant to the case.
- Explain the empanelment process and, upon request, might permit the attorneys or self-represented party to also make a brief statement explaining the process. The jurors should be informed that, if a question is invasive of their privacy, they may request to decline to answer or have the questioner take steps to better ensure their privacy.
- Ask all questions required by law to the prospective jurors possibly as a group. Yet at least some of the questions must be asked individually outside the earshot of other prospective jurors.
- Excuse jurors if it is determined that service would be a hardship or they could not be impartial.

Questioning

- Once the judge determines that a juror is impartial, the party with the burden of proof goes first.
- The judge may require certain questions be asked outside the presence of fellow prospective jurors.
- Parties may assert challenges for cause and, if the juror is not excused, a peremptory challenge may be exercised at that time beginning with the side that has the burden of proof or, in civil cases, the judge may order both parties alternate challenges. Or the juror may be seated subject to a later challenge after the *voir dire*.
- Upon request, jurors may be questioned as a group in what is known as "panel *voir dire*." In that case, no questions may be asked that appear to seek personal information. Jurors are to be addressed by their juror numbers only. After that, challenges for cause may be exercised. All challenges must be heard outside the earshot of the other jurors. Any time a juror is challenged, the judge may permit the opposing party to ask further questions.
- Any party may object to a question by the other party merely by stating "Objection" without further explanation. The judge may rule on the objection in front of the jurors or the judge may hear argument and rule outside the jury's hearing.
- The judge may set a reasonable time limit on questioning of prospective jurors.
- There will be instituted by the court a pilot project where volunteer judges will conduct "panel *voir dire*" according to procedure to be determined and compile data on it. ■

Peter Elikann is a criminal defense attorney who is vice chair of the MBA's Criminal Justice Section Council. He also serves as a member of the MBA's Executive Management Board.

BAR NEWS

HOD votes to support report on civil legal aid

BY JASON SCALLY

The Massachusetts Bar Association House of Delegates (HOD) voted to support increased funding for civil legal aid at its November 2014 meeting. Supporting civil legal aid is a yearly priority of the MBA through its work with the Equal Justice Coalition. With the vote, the MBA officially backed an October 2014 report by the Boston Bar Association's Statewide Task Force to Expand Legal Aid in Massachusetts.

The vote was one of several items on the agenda for the Nov. 20 meeting, which was held at the Andover Country Club. MBA President Marsha V. Kazarosian started the meeting by praising several recent MBA programs, including two successful MBA "firsts": the October 2014 Consumer Advocacy Symposium and Pinnacle Awards and the kick-off reception for the Complex Commercial Litigation Section (ComCom), the MBA's newest section. Kazarosian also provided updates about her recent meetings with the chief justices of various court departments and spoke briefly about her work as MBA representative on several state commissions. The MBA president also encouraged everyone to participate in the judicial evaluations this year.

MBA Vice President Jeff Catalano announced that the MBA was preparing to unveil an annual scholarship for law students — an initiative that was started during the MBA's 100th Anniversary year. While parameters are still being worked out, Catalano said the goal was to award a scholarship to a law student starting with this year's annual dinner on May 7.

The HOD heard good news on the membership front from MBA Secretary Christopher P. Sullivan, who is also chair of the Membership Committee. Noting that "membership is growing every day," Sullivan credited the creation of ComCom and the Workers' Compensation Section for helping to attract new members. He also pointed to the MBA's strong numbers among law schools.

MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy's report included an update about the MBA's recent *amicus* filings, including one in the Supreme Judicial Court case of *Reckis, et al v. Johnson & Johnson, et al.* where the MBA opposed the expansion of federal preemption of tort liability in failure-to-warn cases.

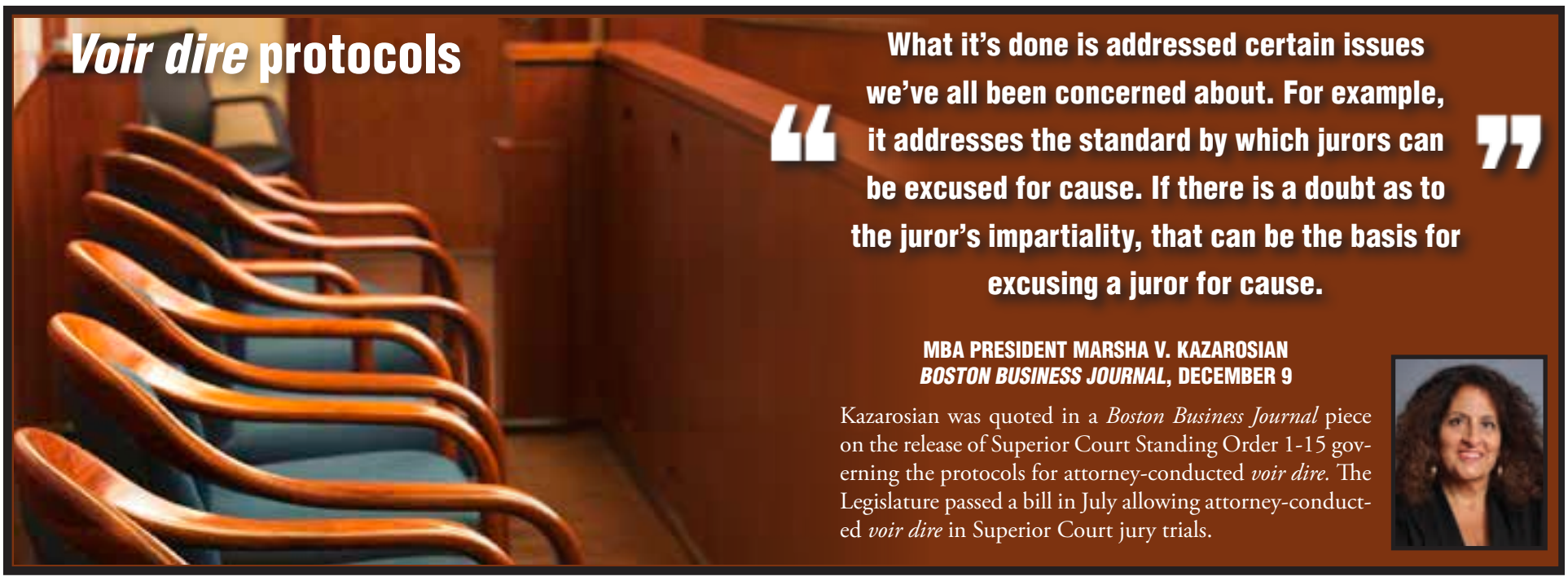
Looking ahead to the MBA's upcoming legislative priorities, Healy cited the MBA's push for higher criminal justice attorney salaries. In particular, he said the bar needs to speak loudly for bar advocates seeking higher rates for their work. "I'll be advocating strongly for that and I ask for your help," Healy said. "Be vocal with your legislators and local leaders you bump into."

Guest speaker Glenn Mangurian, chair of the Court Management Advisory Board, gave a detailed account of the board's role in court reform at a time he called "a historic moment for the courts." As a non-attorney, Mangurian described how he brings a unique perspective to his leadership role, and how he's been inspired by the court workers he sees during his visits. ■

Guest speaker Glenn Mangurian spoke to the HOD about his role as chair of the Court Management Advisory Board.

NOTABLE AND QUOTABLE

MBA MEMBERS IN THE MEDIA



Voir dire protocols

"What it's done is addressed certain issues we've all been concerned about. For example, it addresses the standard by which jurors can be excused for cause. If there is a doubt as to the juror's impartiality, that can be the basis for excusing a juror for cause."

MBA PRESIDENT MARSHA V. KAZAROSIAN
***BOSTON BUSINESS JOURNAL*, DECEMBER 9**

Kazarosian was quoted in a *Boston Business Journal* piece on the release of Superior Court Standing Order 1-15 governing the protocols for attorney-conducted *voir dire*. The Legislature passed a bill in July allowing attorney-conducted *voir dire* in Superior Court jury trials.

Interlocutory appeals policy

"It's the price of being in a democracy that you really do have to treat everyone equal, and they shouldn't be basing their prosecution against a particular defendant solely on dollars and cents."

MBA CRIMINAL JUSTICE SECTION VICE CHAIR PETER ELIKANN
***MASSACHUSETTS LAWYERS WEEKLY*, DECEMBER 4**

Elikann spoke to *Massachusetts Lawyers Weekly* about the practice of favoring interlocutory appeals against indigent defendants with appointed counsel rather than defendants with hired attorneys.

Baker names Povich chief legal counsel

"It's a home-run appointment for the governor. He's one of the brightest intellects in the legal community."

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER MARTIN W. HEALY, *BOSTON GLOBE*, DECEMBER 8

Healy was quoted in a *Globe* story on Governor-elect Charlie Baker's selection of Lon Povich to serve as chief legal counsel in the forthcoming administration.

Student lawsuit at Harvard

"They have no legally cognizable interest in the actions of the Harvard Corporation in its choices on how to invest. I don't believe attending Harvard gives them any kind of interest in the portfolio of investments."

MBA PAST PRESIDENT RICHARD P. CAMPBELL
***BOSTON HERALD*, NOVEMBER 21**

Campbell was quoted by the *Herald* in a piece on a lawsuit filed by the Harvard Climate Justice Coalition against the Harvard Corporation, the nonprofit entity that oversees the university's endowment.

Limo refund

"I'd get a judgment against them and I'd chase them down."

MBA PRESIDENT-ELECT ROBERT W. HARNAIS
WHDH TV (CHANNEL 7), NOVEMBER 13

In this segment of "Solve It 7" a couple tried to get their deposit back from a limo company who abruptly cancelled on their wedding day and did not provide a vehicle. The deposit was made with a check which does not offer the same layer of protection of paying with a credit card.

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

EXPERTS&RESOURCES

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LEGAL NEWS

SJC heard oral arguments in *Reckis* case

On Monday, Dec. 1, the Supreme Judicial Court heard oral arguments in *Reckis, et al v. Johnson & Johnson, et al.* The Massachusetts Bar Association filed an amicus in support of the plaintiffs.

The defendant manufacturers seek to expand the grasp of federal law to preempt tort liability for a failure to warn case — tort liability — that Congress explicitly mandated it to retain.

Visit www.massbar.org/reckis to view the amicus brief. ■

Special Commission votes to eliminate mandatory minimums for drug offenses

The Special Commission to Study the Commonwealth's Criminal Justice System has recommended eliminating mandatory minimum sentences for drug offenses in Massachusetts. The commission voted 9-2 in favor of the recommendation in late November 2014.

In addition, the commission voted to recommend parole eligibility for all state prison sentences after an inmate has served at least two-thirds of the lower end of a sentence (excluding murder and manslaughter cases) and to maintain parole eligibility standards of half-time served on sentences of 60 days or more.

The commission, formed in 2012 by the Legislature, is expected to produce a forthcoming report on its recommendations. Peter Elikann, vice chair of the MBA's Criminal Justice Section Council, serves as the MBA's representative on the commission. The MBA has been a long supporter of eliminating mandatory minimum sentences for drug offenses. ■

Snapshots from around the MBA

BAR SEEN

PHOTO BY PAT OLIER

Reservitz honored with Community Service Award

On Dec. 11, Attorney David S. Reservitz (pictured, left) received the MBA Community Service Award at the Plymouth County Bar Association Annual Meeting from MBA Past President Elaine Epstein (pictured, right). The MBA Community Service Award is given to attorneys who have made important public service contributions to their communities and to publicize the fact that members of the legal profession are caring, involved individuals, eager to use their legal skills for the betterment of society. ■

BAR NEWS

Member Spotlight

Gartenberg to fill Parole Board seat

Lee J. Gartenberg

The Governor's Council confirmed Lee J. Gartenberg for an open seat on the Parole Board. He fills the position formerly held by Joshua I. Wall, who had chaired the Parole Board before becoming a Superior Court judge earlier this year, with a term expiring June 1, 2015. Gartenberg is a member of the Massachusetts Bar Association's Executive Management Board and House of Delegates.

"Lee will bring to this position his high energy, unique legal expertise and very strong commitment to inmate services and reentry programs," said Gov. Deval L. Patrick.

Gartenberg served as the director of inmate legal services in the Middlesex Sheriff's Office, where he had worked since 1982. He provided legal services to prisoners in the Middlesex County Jail and House of Correction.

In addition to his work at the Middlesex Sheriff's Office, Gartenberg also reviewed institutional policies, providing input to the Sheriff's Office, processing and clearing warrants, and drafting legislative proposals to address systemic corrections issues. He represented inmates in post-conviction relief motions and at administrative hearings, including parole revocation and rescission hearings. Gartenberg also participated in training Parole Board members and staff.

Gartenberg is a graduate of the State University of New York at Binghamton and Boston University School of Law. ■

Member Spotlight

O'Donnell appointed to the Commission on Judicial Conduct

Kathleen M. O'Donnell

Massachusetts Bar Association Past President Kathleen M. O'Donnell has been appointed as a member of the Commission on Judicial Conduct by Chief Justice of the Trial Court Paula M. Carey. The appointment is effective Dec. 10, 2014, and her term will expire on Dec. 9, 2020.

The Commission on Judicial Conduct, established in 1978, investigates allegations of misconduct by state judges. Pursuant to G.L. c. 211, §1, three judges are appointed by the chief justice of the Supreme Judicial Court, three attorneys are appointed by the chief justice of the Trial Court, and three lay persons are appointed by the governor to six-year terms.

O'Donnell is a partner in the firm of Kazarosian, Costello & O'Donnell, LLP, with offices in Lowell, Haverhill and Salem. For many years she was associated with the Marcotte Law Firm in Lowell. She is a highly skilled trial attorney with a varied practice which includes an emphasis on personal injury and other civil litigation.

In addition to serving as past president of the MBA, O'Donnell is also past president of the Massachusetts Academy of Trial Attorneys and the Greater Lowell Bar Association. She was the first woman elected to the Massachusetts Chapter of the American Board of Trial Advocates and was recently appointed to and served as a member of the Supreme Judicial Court committee to examine mandatory fee arbitration. ■

PHOTO COURTESY OF JUDGE RACHIDA HLIMI

Court event

MBA President-elect Robert W. Harnais with visiting dignitary Judge Rachida Hlimi from Fez Morocco at an event at Stoughton District Court. ■

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BAR NEWS

Calendar of Events

WEDNESDAY, JAN. 7

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

THURSDAY, JAN. 8

Legal Chat: Unaccompanied Immigrant Children
3-4 p.m.

MBA Mock Trial Judge's Orientation
5 p.m.
MBA, 20 West St., Boston

TUESDAY, JAN. 13

Substance Use, Abuse and Addiction in District Court: Strategies and an Experimental Approach
4-7 p.m.
MBA, 20 West St., Boston

WEDNESDAY, JAN. 14

Banking Law Update
8-9:30 a.m.
MBA, 20 West St., Boston

THURSDAY, JAN. 15

Day in the Life: A Rising Associate
4-6 p.m.
MBA, 20 West St., Boston

TUESDAY, JAN. 20

Intellectual Property Basics
4-7 p.m.
MBA, 20 West St., Boston

WEDNESDAY, JAN. 21

Legal Lunch: Fundamentals of Depositions
12:30-1:30 p.m.
MBA, 20 West St., Boston

Medical Apology Forum
4-6 p.m.
MBA, 20 West St., Boston

THURSDAY, JAN. 22

Practicing with Professionalism (CLASS FULL)
9 a.m.-5 p.m.
MBA, 20 West St., Boston

TUESDAY, JAN. 27

Voir Dire Training: Learn from the experts and be prepared
1-5 p.m.
MBA, 20 West St., Boston

WEDNESDAY, JAN. 28

Media Training: Persuasive communication from your practice to the press
8:30-10 a.m. (8 a.m. registration)
MBA, 20 West Street, Boston

THURSDAY, JAN. 29

Annual Walk to the Hill for Civil Legal Aid
11 a.m.-1 p.m.
Massachusetts State House, Great Hall, Boston

THURSDAY, JAN. 29

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

WEDNESDAY, FEB. 4

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

THURSDAY, FEB. 19

Practicing with Professionalism
9 a.m.-5 p.m.
University of Massachusetts Medical School, 55 Lake Avenue North, Worcester

Real-time webcast available for purchase through MBA On Demand at www.massbar.org/ondemand.

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

MBA seeks nominations for 2015-16 officer, delegate positions

The Massachusetts Bar Association is currently accepting nominations for officer and delegate positions for the 2015-16 membership year.

Nominees must submit a letter of intent and a current resume to MBA Secretary Christopher P. Sullivan by 5 p.m. on Friday, Feb. 20, 2015, to be eligible.

To submit a nomination, mail or hand-deliver the information to:

Massachusetts Bar Association
Attn: Christopher P. Sullivan, MBA secretary
20 West St., Boston, MA 02111

If you have any questions about the nomination process, call MBA Chief Operating Officer Martin W. Healy at (617) 988-4777. ■

FOR YOUR PRACTICE

Lawyers Concerned for Lawyers

Anger in the courtroom

Q: I've been a contracted Commission for Public Counsel Services (CPCS) lawyer for many years, and in many ways I think I have a great handle on the job. But it seems that I've also lost patience when others — often an overly entitled client, but sometimes an assistant district attorney or even a judge — have an axe to grind that gets in the way of a reasonable resolution to the case. I'm confident of the correctness of my instincts from a legal standpoint, but I now find myself coming to the attention of those in authority positions, as well as the Board of Bar Overseers, so I guess I need help with "anger management."

A: Remember that scene from *And Justice for All*, where Al Pacino's character completely loses his temper in court? His points are valid, and his outrage well-founded, but there is no benefit in his mode of expression (other than to entertain us in the movie audience and vent our shared anger at, as you say, the obstacles to reasonable justice). Thankfully, you show self-awareness of what's happening with your frustration and how it is working against you.

There are various approaches to "anger management," some of them more appropriate for those with a much lower level of awareness and who justify even abusive behavior. Approaches for people who do have insight often involve developing a behavioral analysis of triggers to anger and finding alternate ways to think and behave in reaction to them. Indeed, strong, reflexive reactivity without awareness or conscious decision-making is often a recipe for regrettable behavior.

A related, but different, approach involves applying so-called "mindfulness" to the situation arousing the reaction (in your case, the behavior of clients/lawyers/judges that you find self-serving and irritating). Mindfulness is in some ways the current incarnation of the "meditation" and "relaxation response" and "be here now" approaches (those terminologies more prominent in previous decades). More broadly, there is an emphasis on, in a sense, zooming out to a broader perspective from which one *observes* and *accepts*, rather than judging or reacting.

Imagine that you are driving on an interstate when suddenly you're hit by a blinding snowstorm. It might be natural to react with fear, anger at nature, at the foolish drivers barreling past you on the slippery road, etc., but what would be the most helpful stance? Probably to become more grounded, highly alert, observing conditions and positions of other vehicles, accepting the immediate reality since it is the one before you, and using your awareness and experience to make fluid choices about navigation — responding more than reacting. There might also be the sense of slowing down the action and viewing the entire situation from a greater distance. It may well be that this road should be better lit, that the weather forecast should have been more accurate, etc., but focusing on those factors over which you have no control is worse than useless, because it uses mental resources that could be focused on using the available information to find the best solution.

The analogy to your situation is obvious enough that we need not spell it out. Taking a more mindful approach does not mean that you deny your anger — you can observe it within yourself, including its physical manifestations. But taking a few self-observing breaths coupled with increased perspective, you may be able to let it go, identify more productive ways and times to express it and prevent stirring up additional conflict or calling negative attention to yourself.

At Lawyers Concerned for Lawyers (LCL), we can do a careful review with you of the situations that have elicited these difficulties, and get you started on a path toward better management of your anger when it emerges. As we often mention, our services are confidential and free to any Massachusetts lawyer (or law student or judge), and if you need more sustained clinical input, we refer to quality outside providers. ■

Questions quoted are either actual letters/emails or paraphrased and disguised concerns expressed by individuals seeking assistance from Lawyers Concerned for Lawyers. Questions for LCL may be mailed to LCL, 31 Milk St., Suite 810, Boston, MA 02109; emailed to email@lclma.org or called in to (617) 482-9600. LCL's licensed clinicians will respond in confidence. Visit LCL online at www.lclma.org.

Snapshots from around the MBA

PHOTO BY MIKE VIGNEUX

Swearing-in ceremonies

MBA President Marsha V. Kazarosian spoke to new attorneys about the importance of becoming involved in bar associations as a new practitioner at the Nov. 19 swearing-in ceremonies at Faneuil Hall. ■

EXPERTS&RESOURCES

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

SECTION REVIEW
MASSACHUSETTS BAR ASSOCIATION
MASSACHUSETTS LAWYERS JOURNAL
JAN 2015

YOUNG LAWYER PRACTICE

Bringing value to clients: Advising on wage and salary risks

BY ERIC MORENO

ERIC MORENO is a second year associate at The Jacobs Law, LLC in Boston. His practice focuses on business litigation and new business financing and formation representation.

One tried and true strategy for the young lawyer trying to stand out among the crowd of eager new attorneys is by providing existing clients with value-added services. Any attorney, including those fresh out of law school, can provide value by delivering services that go above and beyond the traditional scope of practice or what is generally expected of an inexperienced lawyer. This will not only improve your standing with supervising attorneys, but also serve to increase the perceived value of your services received by the client. Clients who receive un-billed, value-added services are more likely to remain loyal to the firm or to the attorney whose services they believe to be "more bang-for-the-buck." (Providing additional services that are billed without the client's consent could result in bar, or, in the least, firm discipline.) And loyal clients, of course, are more likely to serve as a valuable referral source for future business.

An easy way for a junior associate who enjoys direct contact with business clients to provide value-added services is to educate the client on the substantial risks their businesses face from potential wage and salary liability. This area of law is a great place for a new attorney to provide value to business clients for several reasons: (1) many employers are unaware of the stiff penalties associated with the Massachusetts Wage Act; (2) wage and salary issues are common for businesses with employees (especially those utilizing independent contractors or interns); (3) Massachusetts case law has been rapidly evolving in favor of workers over the past few years; and (4) the law's straightforward application to facts is not so complex as to require a deep reservoir of experience or legal knowledge.

Massachusetts businesses that regularly utilize the services of independent contractors, consultants or interns, or are engaged in any business that brokers personnel services to outside businesses, risk devastating consequences for the misclassification of workers as independent contractors or interns as opposed to employees. Such consequences may come in the form of class action lawsuits brought by current and former workers for Wage Act violations (which mandate treble damages), civil and criminal penalties levied by the Massachusetts Attorney General's Office, and/or audits by the IRS, U.S. Department of Labor (DOL) and/or the Massachusetts Office of Labor and Workforce Development. Many Massachusetts business owners are unaware that their independent contractor relationships (even when undertaken in good faith and agreed to in writing) could threaten the existence of their business. Yet even more shocking to most is the fact that the Wage Act authorizes personal liability of officers, owners and managers of the business, placing their personal assets on the chopping block, as well.

The Massachusetts independent contractor statute creates a presumption that a worker is an employee, unless the employer can prove each of the three prongs as set forth in §148B (a/k/a, the "ABC Test"). The three prong test states that an individual performing any services for or on behalf of a business is considered to be an employee unless the employer can show that:

(1) The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact;
(2) The service is performed outside the usual course of the business of the employer; and
(3) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

This test is strictly applied regardless of whether the worker incorporated his or her own legal entity or performed the services through an intermediary entity. Therefore, even if the employer files 1099s in a corporate name with an employer identification number, the workers performing the service — even those hired by the independent contractor — can all be deemed employees. It can also apply to out-of-state workers who performed the work outside the commonwealth if the court finds that Massachusetts has the most substantial connection to the work performed. It even applies when both parties acknowledge that the worker was an independent contractor responsible for his own taxes, insurance, and was not entitled to any employment benefits from the business, because the courts in Massachusetts have found that workers cannot waive their rights under the independent contractor law, Wage Act, or to workers' compensation and unemployment insurance benefits.

The test also applies to interns, who are required to be paid at least minimum wage unless they perform services while undergoing "training" in a charitable, educational or religious institution. The definition of "training" adopted by the Massachusetts Department of Labor Standards is the same six-part test used by the DOL. This includes the requirement that "the employer … derives no immediate advantages from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded." Of special note, even when an employer has followed the federal guidelines for independent contractor and intern classifications to the letter, they may still violate the more stringent state laws and regulations.

Recent Massachusetts case law reveals a clear preference for establishing workers as employees and enforcing drastic penalties against businesses and their owners/managers for misclassification that results in Wage Act violations. In addition, a marked increase in enforcement of wage-and-hour laws by state and federal agencies, an increased willingness of plaintiffs' attorneys to bring misclassification class actions, and a growing use of paid and unpaid interns and trainees in the workplace have coalesced to create an extremely risky environment for employers who utilize independent contractors or interns.

The reasons for enacting the stringent independent contractor and intern tests, however, are numerous and evident. The rules protect workers by ensuring they receive the fair wages, unemployment insurance, workers' compensation benefits, employer-provided health care and any other mandated benefits to which they are entitled to under the law. Further, the statute discourages practices that deprive the commonwealth of tax revenues and unemployment premiums it would otherwise receive from employers. Lastly, enforcement rewards businesses that follow the rules by punishing those that gain a distinct competitive advantage from misclassifying employees.

Nevertheless, because the rules are aimed at punishing businesses that attempt to evade tax, insurance and employment-benefit responsibilities, many small business owners incorrectly believe that by operating in good faith, with established long-standing employment policies aimed at benefiting both the worker and the business, that they are safe from litigation or governmental inquiry. Further still, a decision by the Department of Unemployment Assistance that a worker is *not* an employee, does not absolve the employer from civil liability.

A hypothetical may be illustrative: Imagine a Massachusetts company in the business of brokering personnel to outside companies to provide a limited service on an as-needed basis. For several decades, entering into written agreements with independent contractors and independently owned and operated business entities. The parties agreed that in exchange for a percentage of revenue brought in through the brokered relationship, the independent contractor/entity received the autonomy of hiring, training and directing its own personnel, dictating its own hours, working when, where, and how it chose, and, in some cases requiring its own workers to wear uniforms of the independent contractor's company. In some cases the independent contractors even hired their own W-2 employees and maintained their own payroll. Although it had operated its business in this manner for many years, and despite numerous DOL, IRS and state agency investigations, which all cleared the company's business practices, the company is sued by a class of former independent contractors for non-payment of overtime wages. On summary judgment, the court, citing to the shift in recent case law, finds that the workers — even the individuals who incorporated a separate business with their own employees and with complete autonomy — are misclassified and are, in fact, employees. At this point the business has no choice but to settle the claims at the barrel of a gun, because the only other option is to face a trial on damages, with mandatory tripled damages.

Had the company been educated as to the changing landscape of independent contractor law working against it earlier, all (or most) of the troubles could have been avoided. This is where an attorney, who embodies the notion that an advocate does not simply represent a specific matter but represents the client and all its interests as a whole, could have truly stood out.

Although it may seem presumptuous, a young attorney spending a little extra time inquiring into a business client's employment practices can produce big dividends in the form of repeat business and referrals. Even if the client came to your firm for help on a different matter, the typical risk-averse business owner will greatly appreciate receiving free advice related to an area of great potential liability that the owner was not previously aware of. This type of value-added service, going above and beyond the expectations of a client, is one of the best ways for the newly minted attorney to stand out and make a name for him or herself. ■

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

SECTION REVIEW

MASSACHUSETTS BAR ASSOCIATION

MASSACHUSETTS LAWYERS JOURNAL JAN 2015

BUY-SELL AGREEMENTS

Protecting the future of your business

BY BRYAN C. NATALE

Many business owners find success by focusing their time on making decisions that position the business for growth and ensure the business' competitive edge in the marketplace. Few business owners, however, plan for contingencies that could stifle the continuation of the business, like the death, disability, retirement or voluntary withdrawal of a business owner. Regardless of the way a business is organized — corporation, LLC, partnership or sole proprietorship — if you own, in whole or in part, a privately held business, you need to protect the future of your business before unplanned events significantly diminish the value of the business and risk the continuation or transition of the business.

A buy-sell agreement is one succession planning tool that owners of privately held businesses can utilize to plan for what will happen when one of the business owners dies, is disabled, retires or voluntarily withdraws. As with most business documents, a buy-sell agreement should be considered a living document, one that is continuously reviewed and modified in order to capture the intent of the owners as changes occur over time with the business, its owners and the marketplace in which the business operates.

A buy-sell agreement makes sense for any type of privately held business entity, no matter the size, as the most basic business can experience unexpected events and disputes among the owners. In order to avoid confusion and create a formal process to handle events like death, disability, retirement and voluntary withdrawal, a carefully drafted buy-sell agreement should be a priority for business owners whether their business is just taking off or an already mature and operating business.

Before a buy-sell agreement is prepared for the business and its owners, the owners must, at a minimum, consider the following:

What type of arrangement is best? There are three basic types of buy-sell agreements: (i) a redemption arrangement, (ii) a cross-purchase arrangement and (iii) a hybrid arrangement. A redemption arrangement is one in which the business agrees to purchase the business interest from an owner (i.e., shares in a corporation or membership interest in a limited liability company) upon the occurrence of some triggering event (as described below). Under this arrangement, the business controls the funding and purchases the owner's interest. In a cross-purchase arrangement, the owners themselves, rather than the business, agree to buy each other's business interest. Typically, each business owner enters into the cross-purchase arrangement and is either obligated or has the option to purchase the business interest of his or her fellow owner upon the occurrence of a triggering event. Under this scenario, the individual owners must have the funds to purchase the exiting business owner's interest. Finally, in a hybrid arrangement, either the business or the owners have the option to purchase the business interest of an owner upon the occurrence of a triggering event.

BRYAN C. NATALE is an attorney at Bartlett P.C. in Boston, where he advises business organizations on a variety of transactional matters, such as structuring of legal entities, financings, mergers and acquisitions, corporate governance and succession planning. He was admitted to the Massachusetts Bar in 2011 and is a graduate of Suffolk University Law School and Boston College. Natale is serving his third term as a member of the Board of Directors for the Massachusetts Bar Association, Young Lawyers Division. He can be contacted at bcn@bartlettpc.com or (617) 904-9424.

What are the triggering events? A triggering event is any event that will cause a business owner's interest to be sold. The most common triggering events are death, disability, retirement and voluntary withdrawal.

How will a purchase price be determined? When a triggering event occurs and a purchase is triggered, a buy-sell agreement should address how the purchase price is determined in every situation. The following are a few of the common options:

Fixed price – A buy-sell agreement may provide that the owners initially agree on a fixed price and then periodically adjust the price on a set schedule, as reasonably determined by the owners (i.e., annually). While many closely held businesses use this approach because of the benefit to set the price themselves, there are a few drawbacks. One drawback is the owners may not have the discipline to meet periodically as determined in the buy-sell agreement. In addition, the owners may not agree on a fixed price due to various motivations by each owner. Moreover, if the owners do not adhere to the periodic schedule set forth in the buy-sell agreement, a fixed price may not represent the current value of the business.

Formula – A formula may be used to compute the value of the business, which can be related to book value and/or earnings. In theory, the formula approach should be flexible and provide an accurate value even as the business changes over time. Ideally, the value should be able to be calculated with only minimal input from the business's accountant without the need for a full appraisal. For example, the formula may be (i) the average of the net profits (as defined in the buy-sell agreement) of the business for its last three years, multiplied by three, or (ii) book value, or some multiplier of that book value.

Appraisal – The business may hire an appraiser to value the business. Ideally, the appraisal valuation should initially be determined at the time the buy-sell agreement is first executed. In the event that the owners do not agree on the appraisal value, the buy-sell agreement should provide a mechanism that allows multiple appraisals to be used in order to reach a value that all owners reasonably accept. One drawback of the appraisal approach is that the owners have no say in the determination of the value of the business.

How will the purchase price be funded? In the event a triggering event occurs, one or more of the parties to the buy-sell agreement will need to purchase the departing owner's interest depending on the type of arrangement determined by the owners. As such, the ability to deliver such payment may be difficult given certain liquidity conditions. In the event of a death, one common option business owners use is life insurance. The purchase of life insurance is used in both the redemption and cross-purchase arrangement, which proceeds thereof will then be used to purchase the deceased owner's interest. In the event of triggering events other than death, life insurance will not be appropriate. In this instance, it is common for the owners to agree that the use of a promissory note for payment over a certain time is most reasonable. In addition, the parties may agree to require a certain percentage down payment at the time of purchase or require an acceleration based on certain business events or performance metrics.

What are the purchase price payment terms? The payment terms of a buy-sell agreement can be flexible and will largely be based on how the owners determine to fund the purchase of an owner's interest, either by using the proceeds of an insurance policy (i.e., life or disability), lump sum payment or payment over time by a promissory note.

As illustrated above, there are many considerations that go into preparing a well thought out buy-sell agreement. Accordingly, it is critical for the owners to carefully contemplate the goals, values and expectations of the business (and one another) before implementing a buy-sell agreement. While this agreement can be amended at any time by the business and its owners, it is more prudent to get it right the first time and avoid the "do it later" approach. The value of removing any uncertainty cannot be overstated. ■

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

SECTION REVIEW

MASSACHUSETTS BAR ASSOCIATION

MASSACHUSETTS LAWYERS JOURNAL
JAN 2015

CHILD WELFARE LAW

Child welfare law at a critical juncture in Massachusetts

BY CRISTINA F. FREITAS AND DEBBIE F. FREITAS

Cristina F. Freitas

Debbie F. Freitas

CRISTINA F. FREITAS and **DEBBIE F. FREITAS** are partners at the law firm of Freitas & Freitas, LLP in Lowell. Their practice focuses primarily in the Massachusetts Juvenile Court, where they represent parents and children in child welfare and child requiring assistance proceedings

From the monumental *Connor B.* federal class action lawsuit to the tragic death of Jeremiah Oliver to the controversial treatment of Justina Pelletier, the Department of Children and Families (DCF) has received an unprecedented level of public attention and scrutiny this past year. Child welfare law, a relatively overlooked practice area until now, has recently captured not only the increasing attention of the public, but the legal profession, as well. This year, all three branches of government in Massachusetts are poised to tackle this complex and essential area of law.

The candidates' views on and role with the struggling child welfare system were prominently featured in the gubernatorial debates between Martha Coakley and Charlie Baker. Now that Charlie Baker has entered the corner office, the governor has spotlighted DCF as one of the state agencies that will be prioritized during his term. With agency caseloads burgeoning, the critical issues of adequate funding and sufficient staffing at the agency charged with safeguarding this commonwealth's most vulnerable children will be paramount.

At the same time, the commonwealth's Juvenile Courts experienced a 93 percent increase in care and protection filings alleging abuse or neglect of children in January 2014, compared to the previous year, with similar increases throughout the remainder of the year. A significant majority of these cases involved families impacted by poverty, substance use or mental health issues. These families have struggled to address these issues in a climate of limited access to and availability of services that were intended to address parental shortcomings while providing a safe home environment for children. In the wake of an overburdened social service agency, an ever increasing number of child welfare attorneys are working case by case with community service organizations and providers to ensure access to necessary services. These attorneys are not only litigating cases, but also assisting clients in accessing services that will address the medical, mental health, safety or education barriers preventing reunification, or helping families with more chronic and serious issues reorganize themselves with the help of extended family and kin — all while protecting constitutional parental and child rights.

From bills looking to reform the foster care system to adding a best-interests representative for each child in a care and protection case, the legislative branch was equally engaged in identifying and repairing the weaknesses in our child protection system. When the legislative session recessed in August 2014, dozens of bills addressing aspects of the child welfare system that were filed during the previous biennial session went unpassed. The incumbent and returning legislators will have the difficult task of continuing this work, redrafting, re-filing, and reconsidering the Legislature's responsibility in keeping the commonwealth's families together and their children safe.

Perhaps the greatest challenge, however, will be at the agency level, where the struggling agency must reform its public perception from an adversary of intact families to an ally in strengthening families. The agency has already begun this strategic planning process to promote a greater sense of collaboration via innovative and culturally sensitive partnerships with community supports in one of the poorest and most challenging cities in Massachusetts. If successful, it will serve as a new model of child welfare practice.

This critical time in the child welfare system provides a unique opportunity for practitioners in this area of law to advocate not just for their clients but also for systematic change in the way our clients, parents and children alike, interact with DCF and the services available to them. As all three branches of government tackle this sensitive area of law, our input as practitioners into how the system is reformed to provide more effective services to families is vital. ■

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SECTION REVIEW

MASSACHUSETTS LAWYERS JOURNAL
JAN 2015

MASSACHUSETTS BAR ASSOCIATION

HEALTH CARE LAW

Navigating the *Golchin* gulch

BY SAM SEGAL

SAM SEGAL is a personal injury attorney with Breakstone, White & Gluck, P.C. in Boston, MA. He is also currently the Treasurer of the MBA Young Lawyer's Division.

The Supreme Judicial Court (SJC) recently stated in its *Golchin v. Liberty Mut. Ins. Co.*, 466 Mass. 156, 166 (2013) *Golchin II* decision that the optional Medical Payments (MedPay) coverage on auto insurance "may be approaching irrelevance in light of the recently enacted 'universal' health care mandate."

In an era where there is near-universe health insurance coverage in Massachusetts (and the nation through the Affordable Care Act), there has been a recent series of cases, *Golchin I* and *Golchin II*, that have attempted to untangle the knot of how Personal Injury Protection (PIP), MedPay and private health insurance interact where all three apply, in some cased simultaneously and, perhaps surprisingly, allowing for a double recovery for injured parties.

I break down how the medical payments are covered below.

The first $2,000 (PIP applicable):

The statute and case law is clear that the first $2,000 in medical bills are to be paid by PIP.

Medical bills in excess of $8,000 (MedPay and health insurance applicable): Once the total medical bills for an injured party in an incident exceeds $8,000, PIP no longer applies. This leaves MedPay and health insurance as potential payers of the excess bills (the following scenarios assume both could apply; e.g., $25,000 in MedPay coverage and valid health insurance).

It should be noted that all medical bills beyond PIP's initial $2,000 (for non-ERISA health insurance) and $8,000 (for ERISA health insurance plans, including MAHealth and Medicare) must be submitted to the health insurer before MedPay is required to consider them. This prevents plaintiffs from strategically avoiding health insurance liens where both MedPay and health insurance may apply as primary coverage.

Health insurance is secondary to MedPay: If the health insurer rejects payment of the medical bills due to a "coordination of benefits provision" in their contract making them secondary to MedPay, then MedPay must pay for the medical bills up to their available limits.

Health insurance and MedPay are primary: Where both health insurance and MedPay are primary, an injured plaintiff may recover under both policies above the $8,000 PIP cap, even where that may result in a double recovery. This is the crux of the *Golchin* cases.

In *Golchin*, the plaintiff incurred over $100,000 in medical bills resulting from an auto incident. PIP had paid $8,000 and was exhausted. Golchin's health insurer had paid over $30,000 for the remaining bills. Golchin then submitted the health insurer's lien to MedPay for payment under the auto policy, which was denied.

The plaintiff brought an action in Superior Court, asking the court to declare MedPay coverage available to pay the lien; the insurer argued that the coverage would not apply, as the bills had already been paid by the health insurance. The court rejected the insurer's position, holding instead that "the unambiguous language of the auto policy provides MedPay coverage even where a health insurance provider has paid medical expenses resulting from injuries sustained by a claimant in an accident, ➤19

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SECTION REVIEW

MASSACHUSETTS LAWYERS JOURNAL
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ANIMAL RIGHTS LAW

'Puppy Doe'-inspired legislation will further protect abused animals

BY KAREN RABINOVICI

KAREN RABINOVICI practices health care and business law with Pierce and Mandell, P.C., in Beacon Hill. She is an avid animal lover and a passionate animal rights advocate.

The harrowing case of "Puppy Doe," as one canine victim of severe abuse came to be called, became infamous nationwide, and Puppy Doe became representative of all mistreated animals. As the case swept over the nation, a collective outraged voice demanded that perpetrators of such severe abuse towards innocent animals be handled in an appropriate manner by the justice system — in other words, such people should not be able to "get away with it," as most laws, with light penalties and minimum or no reporting requirements, have previously enabled. In Massachusetts, that voice culminated in the passage of S. 2345, An Act Protecting Animal Welfare and Safety, a major victory on behalf of abused animals in Massachusetts.

Puppy Doe was confiscated in Quincy by the Animal Rescue League of Boston in August 2013. Puppy Doe's physical state revealed that she had been systematically and severely starved and tortured over several months. The media reported that her wounds showed "medieval-style" torture. Among many other injuries, Puppy Doe was half her normal weight, had been stabbed and burned, was subjected to having her limps stretched until her joints ripped apart, had broken ribs and vertebrae, had crushed cheekbones, and her tongue had been sliced in two halves. Photos of the puppy, covered in horrific wounds, haunted the population nationwide. Because her injuries were so severe, Puppy Doe had to be humanely euthanized. Her alleged abuser, Radoslaw Czerkawski, has been charged with animal cruelty. Puppy Doe united the public in its determination to ensure that people such as her owner be penalized as deserved.

S. 2345 increases maximum penalties for animal cruelty from five to seven years in prison and from $2,500 fines to $5,000 fines. It enhances penalties for repeat offenders, changing prison time to up to ten years and fines up to $10,000. S. 2345 requires veterinarians to report suspected animal cruelty, and it creates a task force to consider future protections for animals and ways to strengthen Massachusetts' animal cruelty laws. S. 2345 was signed into law on August 20, 2014, and took effect on Nov. 18, 2014.

The last time penalties for animal cruelty were updated was in 2004, and that update was less protective than animal advocates originally sought, so S. 2345 is welcome and necessary. In addition, more protective animal cruelty laws are in the Massachusetts community's interest, as research has shown a link between domestic violence and animal abuse. Patterns have been proven among perpetrators of animal abuse and child abuse, spousal abuse, and elder abuse, amongst other forms of violence.

Then Gov. Deval Patrick, Reps. Bruce Ayers and Louis Kafka, Sens. Bruce Tarr and Mark Montigny, and former Sen. Gale Candaras helped ensure that the bill move as far as possible during the formal legislative session. Although Puppy Doe's short life was miserable and pain- and fear-filled, the memory of the puppy is memorialized in S. 2345, leaving her with a lasting legacy that will help protect other abused animals.

For more information on the intersection of the law and animal rights, please consider joining the Massachusetts Bar Association's Animal Law Practice Group. ■

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SECTION REVIEW

MASSACHUSETTS BAR ASSOCIATION

MASSACHUSETTS LAWYERS JOURNAL JAN 2015

YOUNG LAWYER PRACTICE

Section 8 terminations and reinstatements

BY MICHAEL J. MOLONEY

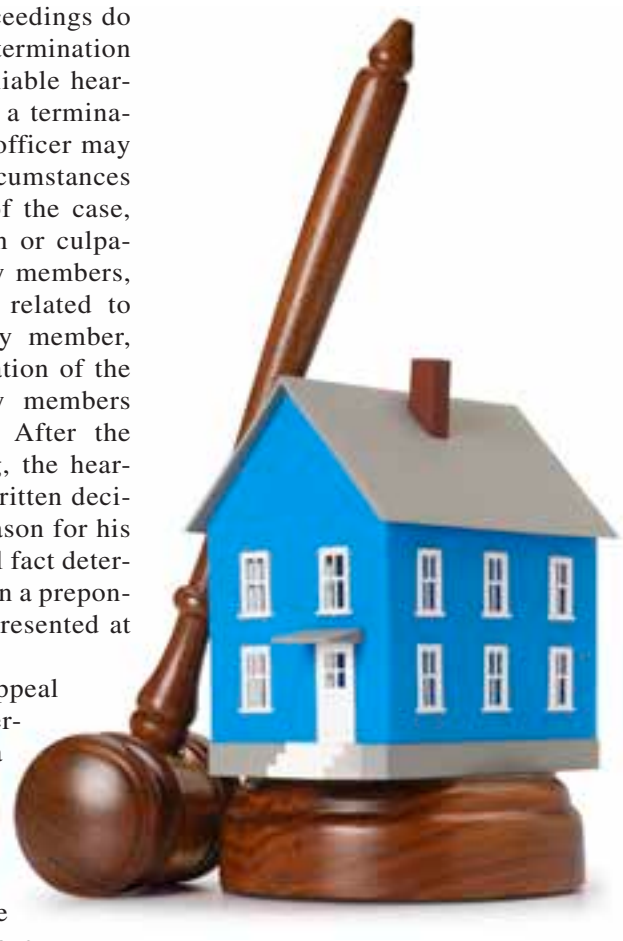
Attorneys, especially those new to the practice of law, can benefit from knowledge of Section 8 Housing Choice vouchers and the Section 8 termination process. Under the Section 8 Program, rental assistance is paid on behalf of eligible low income families to help them afford housing in the private rental market. Rental units must meet minimum standards of health and safety, as determined by a Public Housing Authority, who administers the Section 8 vouchers. A housing subsidy is paid to a landlord directly by the Housing Authority, and the Section 8 recipient is then responsible to pay the difference between the rent charged by the landlord and the amount subsidized.

The grounds for which a participant's subsidy may be terminated are set forth at 24 C.F.R. § 982.551; 24 C.F.R. § 982.552 and 24 C.F.R. § 982.553. Additionally, a Section 8 termination is subject to the due process requirements established in *Goldberg v. Kelly*, 397 U.S. 254 (1970). If the Housing Authority determines that a termination is appropriate, it must: (i) give the participant(s) prompt written notice that contains a brief statement of reasons for the termination; (ii) inform the participant(s) that he or she may request an informal hearing on the decision; and (iii) state the deadline for the participant(s) to request the hearing 24 C.F.R. § 982.555(c)(2). This notice must include sufficient facts so that it puts the family on notice to the reasons for the proposed termination. The Housing Authority may terminate only on the basis of grounds set forth in the notice, and not on any other grounds. The Housing Authority must also give the opportunity to examine any Housing Authority documents that are directly related to the hearing.

MICHAEL J. MOLONEY is admitted to the Massachusetts and Connecticut bars, and admitted to practice before the United States District Court, District of Massachusetts. Moloney is a graduate of Roger Williams University School of Law, where he received his Juris Doctor, and Sacred Heart University, where he received his Bachelor of Arts. A native of Worcester, Massachusetts, Moloney is the Bristol County Director for the Massachusetts Bar Association, Young Lawyers Division.

Generally, the rules of evidence applicable to judicial proceedings do not apply to Section 8 termination hearings and therefore reliable hearsay is admissible. During a termination hearing, the hearing officer may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of termination of the voucher on other family members who were not involved. After the conclusion of the hearing, the hearing officer must issue a written decision stating briefly the reason for his or her decision. Additional fact determinations must be based on a preponderance of the evidence presented at the hearing.

There is no formal appeal process for Section 8 terminations. However, if a Section 8 participant is terminated from the program, they may either seek to enjoin the termination or seek retroactive reinstatement. Courts have provided relief where it is alleged that a Section 8 subsidy has been terminated in a manner not consistent with due process or the requirements of federal law. Given that these cases are challenging and complicated, knowing certain key provisions can be a valuable asset ultimately benefiting a young attorney representing clients in housing related matters. ■



GOLCHIN

Continued from page 17

and there is no nonduplication provision relating to health insurance. Golchin thus is entitled to recover the MedPay benefits available under the auto policy."

The SJC did consider the policy implications, stating that they "acknowledge it is possible that operation of the plain language of the auto policy, as we have construed it, could result in MedPay benefits duplicating payments made by a health insurer." However, the SJC stated the insurance company was not without remedy, since "it is always open to automobile insurers to petition the Division of Insurance to change the language of the policy so as to clarify that it does not require the result of which they complain."

Many insurance companies have since submitted requests to the Division of Insurance to make changes to their policy language to change the *Golchin* outcome going forward. Any such changes would only impact coverage for auto collisions that occur after they are implemented.

Golchin I & II may be seen as an attempt by the SJC to breathe new life into MedPay coverage, giving the statutorily-mandated offering some new purpose in light of universal health care (thus avoiding near-irrelevance). However, in doing so they are treating MedPay coverage, which is generally considered a form of indemnity, as "less a contract of indemnity than a form of investment [like life insurance]."

$2,000 – $7,999 in medical bills paid by PIP (PIP, MedPay and health insurance applicable): In light of the result in the *Golchin* cases, the interaction of all three policies where PIP has paid between $2,000 and $7,999 in medical bills becomes more complicated.

Full $8,000 PIP coverage for medical bills: Under G.L. c. 90, § 34A, PIP has mandatory limits of $8,000. PIP will pay up to the full $8,000 in medical bills where the insured has an ERISA health insurance plan, including MAHealth and Medicare. This avoids any potential conflicts with health insurance and MedPay coverage.

The *Golchin* gulch: PIP limited to $2,000 for medical bills not paid by a health plan

However, where the insured has non-ERISA Health Insurance, PIP coverage for medical bills is limited to $2,000. PIP will then pay "any medical expenses 'which will not be paid by a health plan,'" up to $8,000 (including deductibles, co-pays and lost wages).

MedPay coverage is secondary to PIP where PIP would apply. This is where things get tricky. Under *Golchin I*, the SJC reiterated the holding in *Mejia*, which found that "only after PIP benefits have been exhausted **or where they are unavailable** does the standard policy provide that MedPay benefits are due." (emphasis added). This sounds straightforward, but the SJC then went on to state that "the standard Massachusetts auto policy therefore contains language expressly precluding the simultaneous payment of health insurance and MedPay benefits at least until the $8,000 limit of PIP benefits has been reached." This is significant, because the SJC cites no specific authority limiting the simultaneous coverage of health insurance and MedPay within the $2,000-$7,999 range of PIP payments, as it would hold applied once PIP was exhausted at $8,000 in *Golchin II*.

The Massachusetts Division of Insurance Bulletin 2008-12, which deals with the coordination of benefits between PIP, MedPay and health insurance, states in its examples that these claims must first be submitted to the health insurer and, if they are denied, are then resubmitted to the auto carrier for payment under PIP or MedPay. There is no statement on the applicability of simultaneous coverage in light of the *Golchin* cases.

Insurance companies have cited the *Golchin I* language as a basis to deny MedPay coverage until PIP has paid $8,000. Plaintiffs have asserted that the holdings of *Golchin I & II* require MedPay coverage where PIP is "unavailable," i.e., where Health Insurance has paid.

Some insurance companies take a literal reading of the *Golchin I* language to mean that MedPay is not available until all $8,000 of PIP is exhausted. However, this would lead to the potentially absurd outcome where, if PIP has paid $7,999 (including deductibles, co-pays, and lost wages) and the medical bills total $20,000, there would be no MedPay coverage available. If PIP paid just $1 more (even in lost wages) and capped out at $8,000, there would be up to $12,000 in MedPay coverage available.

The plaintiff's interpretation of the *Golchin* cases avoids this Machiavellian outcome. Under the plaintiff's reading, MedPay would be owed whenever PIP is "unavailable" (i.e., when health insurance has paid for a bill), even if PIP is not totally exhausted at $8,000. The plaintiff would then be able to submit the bill or explanation of benefits (EOB) for payment under MedPay after submitting it to the health insurer. Plaintiffs have argued that the full bill is due under MedPay, while insurers have sought to limit coverage to the actual amount paid by the health insurer as stated in the EOB. This avoids the absurdity of significant MedPay coverage depending on deductibles, co-pays, and/or lost wages being paid by PIP to reach the $8,000 cap.

Unfortunately, the SJC has not yet made a final determination on the application of *Golchin I & II* to this area of coverage. For now the issue has been left to the lower courts, who have thus far sided with plaintiffs in their interpretation. However, expect a future decision to clarify just how MedPay and health insurance policies interact in light of *Golchin I & II*, where PIP has paid between $2,000 and $7,999 but is not yet completely exhausted at $8,000.

A special thanks to attorney Elliot Beresen of Manelis & Beresen for answering my questions. ■

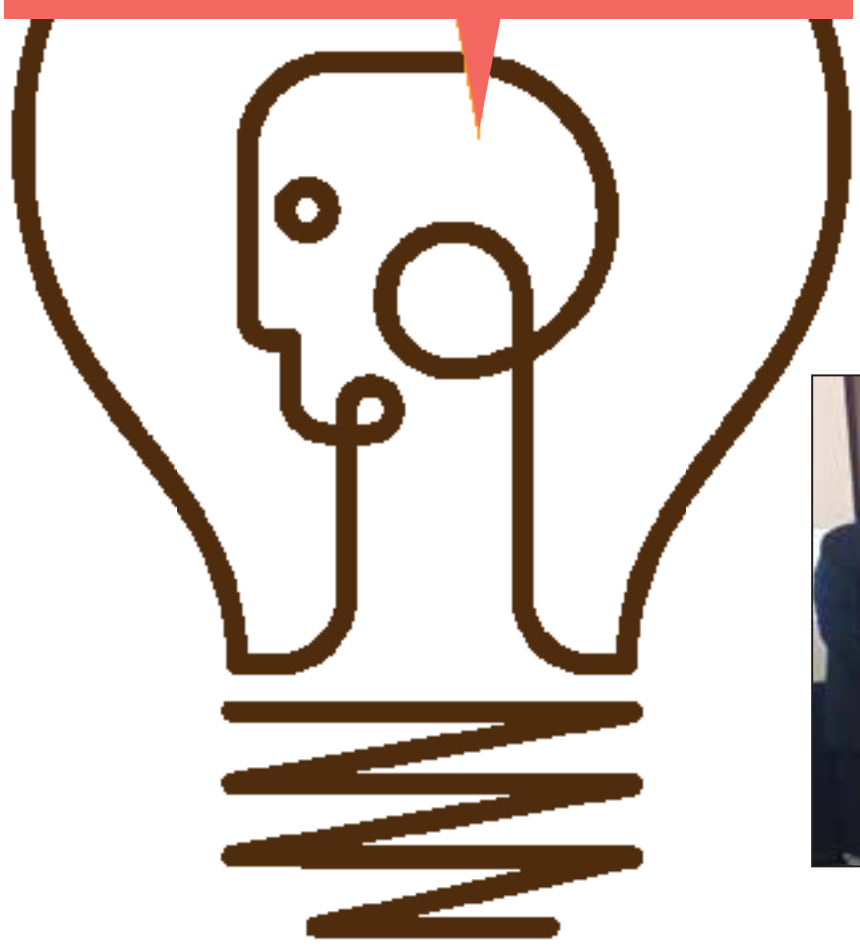
Feed Your Mind Legal Lunch Series

The MBA hosted a Feed Your Mind Legal Lunch Series program on Nov. 19, providing guidance and insight on representing individuals before licensing boards. Pictured (from left): Craig Levey, Esq., moderator; Dorothy Anderson, first assistant bar counsel for the Board of Bar Overseers; Kevin Scanlon, chief legal counsel for the Division of Professional Licensure; and Courtney Shea, Esq.

Techno Mind Meld Roundtable

The Law Practice Management and Young Lawyers Division hosted a roundtable discussion on the hottest technology issues faced by today's practitioners at its Nov. 19 "Techno Mind Meld" program. Email, cloud computing, PDF options and more were among the topics featured in the program, which was moderated by Dmitry Lev, Esq.

MBA ATTORNEYS:
The BEST and the BRIGHTEST.
A look back at recent CLE offerings.



MASSBAR EDUCATES

www.MassBar.org/Education

Lessons for the New Attorney

Hon. Paul A. Chernoff (ret.) (left) and Hon. Edward M. Ginsburg (ret.) (right) shared humorous insights and truths about human nature during a Dec. 2 program at the MBA in Boston. The judges, who combined have more than 70 years on the bench, spoke to attendees about their court experiences.

ADR program at College of the Holy Cross

The MBA's Alternative Dispute Resolution (ADR) Committee organized a presentation at the College of the Holy Cross in Worcester on Nov. 19, about the valuable role ADR can play in our communities and the conflicts that arise in our lives. Pictured (from left): Douglas C. Reynolds, Esq.; Susan M. Jeghelian, Esq.; Gail S. Packer, Esq.; and Michael A. Zeytoonian, Esq.

View from the Bench Series focuses on appellate practice

A panel of judges discussed practice tips and recommendations for success in preparing for and arguing appeals before the U.S. Court of Appeals for the First Circuit, the Massachusetts Supreme Judicial Court and the Massachusetts Appeals Court at U.S. District Court in Worcester on Dec. 3. The seminar provided valuable insights for new attorneys and seasoned litigators.

In-House Counsel Conference provides compliance, management tips

The MBA hosted its 12th Annual In-House Counsel Conference on "Compliance and Risk Management" on Dec. 5. The program provided in-house counsel with information and insight on sustaining a corporate-wide culture of compliance. Conference highlights included opening remarks from F. Beirne Lovely Jr., general counsel of the Archdiocese of Boston, and observations from the bench from Hon. Mary Thomas Sullivan of the Massachusetts Appeals Court. Pictured (from left): Alan Pampanin; Conference Co-chair James C. Donnelly Jr.; Archdiocese of Boston General Counsel F. Beirne Lovely Jr.; William Sinnott Donoghue; Conference Co-chair David A. Parke; Conference Co-chair Peter D. McDermott; and Edward Seksay.