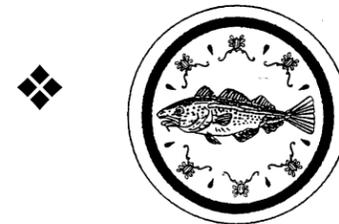




BARNSTABLE COUNTY BAR ASSOCIATION
P.O. Box 718
Barnstable, MA 02630

PSRST STD
U.S. POSTAGE PAID
HYANNIS, MA
02601
PERMIT 80



BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

SPRING 2006

PRESIDENT'S MESSAGE

Who among us does not have fond memories of our beloved Law Librarian, Martha Elkins? We all can recall Martha helping us locate the statute, the case or article needed by us for use the next week, the next day or before the call of the list that day. She was often our "lifesaver", she was always helpful, always friendly, always there to serve the bar and the public with courtesy and grace. So it is with mixed feelings that we bid a fond adieu to Martha, sad for our collective loss but full of happiness for her as she embarks on a new "chapter" of her life. Good Luck, Martha!!

-Arthur Ryley, President, BCBA

A SPECIAL NOTE OF THANKS

The Barnstable County Bar Association would like to extend a special note of thanks to Lois Farmer, Esq. for her lengthy and often unrecognized dedication to editing and publishing this Newsletter. After nearly nine years of performing the role of editor and advertising manager, Lois decided to pass the editorial reins. Lois started as Chairperson of the Newsletter Committee during the 1995-1996 fiscal year and, after a hiatus of approximately two years, from 2000-2002, she continued at her post through the Winter 2006 issue. Thank you, Lois, for your dedication, reliability, and fine work.

The Shock Program: A Success Story

Under the supervision of Sheriff James Cummings, the Barnstable County Sheriff's Office has been increasing public safety, reducing recidivism, and saving taxpayer dollars by effectively treating addictions and changing criminal behaviors of inmates at the Barnstable County Correctional Facility. Research sponsored by the National Institute of Justice in 2002 has proven that Barnstable's Residential Substance Abuse Treatment Program, more commonly known as the Shock program, has been successful in achieving a significant reduction in recidivism for male inmates. One-year post incarceration results revealed the following:

- Offenders' re-arrest rate without treatment was 60 %
- Offenders who completed the six-month Shock program had a re-arrest rate of 32%

Based on these encouraging results, funding was granted to begin a similar Shock program for the women in January of 2005.

The two Shock programs are structured as therapeutic communities with military bearing protocols taught as a strategy to develop discipline, pro-social character, motivation to change, and pro-social values. By utilizing positive peer reinforcement for pro-social values, the community itself becomes the therapeutic factor for change. The therapeutic community forms a culture based on principles of recovery common to 12-step programs and offers

(Continued on Page 5)

Commercial Collections in Small Claims Court

Advising commercial clients on small claims

Most business clients face the issue of collecting relatively small debts owed to them. Sometimes that debt is just too small to justify hiring an attorney to file a lawsuit in District Court. Contrary to many business clients' assumptions, Small Claims Court is a cost effective option for collecting business debts. Corporations may represent themselves in Small Claims Court, unlike in higher courts. The statutory limit for Small Claims Court is \$2,000. However, claims for double or treble damages for unfair trade practices between businesses under Chapter 93A §11 can be brought in Small Claims Court, if the initial damages claimed without doubling or trebling do not exceed \$2,000. M.G.L. c.218 § 21. Filing fees are also inexpensive- \$30 for claims of \$500 or less and \$40 for claims of more than \$500, plus a \$10 surcharge. M.G.L. c. 218 §22 and M.G.L. c.262 §4C. The law actually discourages plaintiffs from bringing small claims in District or Municipal Court. Any plaintiff who brings a civil claim in another court that could have been brought in Small Claims Court and prevails cannot recover costs (other than taxable cash disbursements), except by special order of the court. MA St Dist and Mun Cts Supp RCP Rule 115 and M.G.L. c.218 §25.

Business clients often ask whether Small Claims Court will actually afford them the opportunity to collect debt, as opposed to simply obtaining a judgment. Unfortunately, Small Claims Court does not permit pre-trial attachments. Although rarely granted, post-trial attachments may be granted by a Small Claims Court. Uniform Small Claims Rule 6 and M.G.L. c.218 §22. and 14 MaPrac. §3.16.

Fortunately, Small Claims Courts do take several steps to assist plaintiffs with the collection of judgments. If the decision is for the plaintiff, the court will order that the judgment be paid to the plaintiff by a specified date. Uniform Small Claims Rule 7(g). If the defendant was present for the decision and does not pay by the date specified or

agree to pay on a schedule, the court will conduct a payment hearing and require the defendant to fill out a written financial statement under penalties of perjury. Uniform Small Claims Rule 7(g). The financial statement may include but is not limited to production of income tax returns, payroll stubs, production of bank books, and payments to creditors. Uniform Small Claims Standard 9:0 Commentary. A payment hearing is also automatically scheduled 30 days from judgment unless waived by the plaintiff. If the defendant does not appear for the payment hearing and still does not pay, the court may immediately issue a *capias* to bring the defendant before the court without the need for prior service of an Order to Show Cause pursuant to Rule 9(a). Uniform Small Claims Rule 7(g). If the defendant disobeys an order to pay after the payment hearing, the clerk must schedule enforcement proceedings and issue a Notice to Show Cause to the plaintiff to

(Continued on Page 7)

**MEDIATE/ARBITRATE YOUR CAPE COD
DISPUTE WITH THE MOST EXPERIENCED
TRIAL COURT PROFESSIONALS:
RETIRED JUSTICES**

Honorable James J. Nixon
Retired Justice of the Superior Court
P.O. Box 1
N. Falmouth, MA 02556
Tel: (508) 563-2400

Honorable Roger B. Champagne
Retired Justice of the District Court
P.O. Box 111
N. Falmouth, MA 02556
Tel: (508) 563-5366

Available for Arbitration and
Mediation Services And Probate
Court Guardianships

**No Need to Cross the Bridge
for Knowledge and Experience!**

Commercial Collections in Small Claims Court

(Continued from Page 2)

be served on the defendant by a sheriff. Uniform Small Claims Rule 9(a). The judge can make a determination whether to enter an adjudication of civil contempt or to issue an order of incarceration to enforce payment of the judgment. Uniform Small Claims Rule 9(b).

As stated in Uniform Small Claims Standard 9:03, "Once the defendant is before the court on a *capias* or order to show cause, the court should expeditiously hold a contempt hearing. Only a judge may fine or imprison a defendant." Standard 9:03 commentary states, "A judge considering incarceration as the remedy for contempt has two options. The first is to issue a traditional civil contempt ruling whereby the defendant is held in jail only so long as the court's order for payment or other terms set by the judge to purge the contempt are not complied with." Due process still requires that the defendant be advised of the charge against him, that he be given a reasonable opportunity to be heard, including the chance to offer testimony and call witnesses, and the right to retain counsel, but there is no right to a jury trial. *Id.* The Small Claims Court judge's other option is to proceed under the quasi-criminal provisions of M.G.L. c. 224 § 18. *Id.* Standard 9:03 commentary further states, "Under this procedure, the defendant may be punished by not more than 30 days in the common jail or a fine of not more than \$200. Because of the punitive nature of the sanction, more extensive due process is required." It should be noted that a *capias* issued against a corporation should state the name of the specific officer against whom the payment order was made since a sheriff may be liable for arresting the wrong person. Uniform Small Claims Standard 9:02 Commentary citing M.G.L. c.224, §15, 16 and Standard 7:02.

Lastly, business clients also usually ask if it is possible to recover expenses that they paid to pursue collection of the debt. If the decision is for the plaintiff, the plaintiff can recover actual

cash disbursements for the filing, surcharge and service fees. Uniform Small Claims Rule 7(h) and Uniform Small Claims Standard 7:05 Commentary. Only by special order will the court allow witness fees and other costs. Uniform Small Claims Rule 7(h). Uniform Small Claims Rule 7(h) states, "The court may, in its discretion, award additional costs in a sum not exceeding one hundred dollars against any party who has set up a frivolous or misleading claim or answer, or has otherwise sought to hamper a speedy and fair determination of the claim. The court may at any time amend the judgment to add the cost of service of any post-judgment process [including *capias*] that was necessary to enforce the judgment." Attorney's fees may be recovered if there is a written provision in the contract upon which the claim is based or if authorized by statute. Commentary Uniform Small Claims Standard 7:05. The court still may scrutinize claimed attorney's fees authorized by statute, given the simplification of the small claims procedure so that individuals and corporations can pursue such claims themselves. Uniform Small Claims Standard 7:05 Commentary citing *McLaughlin v Municipal Court of the Roxbury Dist.*, 308 Mass. 397, 405 (1941).

-Jenny C. Wilder, Esq., Neelon Wilder LLC



The Shock Program: A Success Story

(Continued from Page 5)

The military life style and name "Shock Unit" are often misleading. These programs are not "boot camps". Inmates are always held accountable for their choices and ability to adhere to the rules, but this occurs within the context of support and praise for change. Choice is the responsibility of the participant. They are rewarded for pro-social choices and objectively held accountable for anti-social choices.

To insure the integrity of this process, a minimum of six months' participation is required. Research has proven that six months is the minimum time required for an offender to establish a committed investment in the effort of changing and to experience the positive results that are a result of attitudinal and behavioral change. Average time spent in the program is nine months, and some participants continue for over a year and serve effectively as peer leaders. Graduates of the program who still reside in the community after they complete the required six months have an opportunity to participate in a

12 week course in the institution's print shop where they learn the necessary skills to prepare them to work in this field.

For sentencing purposes, it is essential to understand that an inmate requires a minimum of a nine-month sentence if they are to enter the Shock Program. They will need a longer sentence if they will earn credit for "time-served" while awaiting trial. The nine month minimum requirement is essential, because an inmate in the program can earn 7.5 days of "good time" off of their sentence for each month served in the Shock Program. Too often, men and women who would benefit greatly from the intensive programming are given too short a sentence to qualify for admittance. Judges have often sentenced someone to complete the Shock program and upon completion will bring them into court to review their sentence. If you have any questions concerning the treatment programs at BCCF, please call A.D.S. Kathie Porteous at (508) 563-4442, or Treatment Director, Roger Allen, at (508) 563-4443.



The Barrister is a publication of the Barnstable County Bar Association and it is intended as an informational tool to its attorney members. The information and opinions expressed in this publication are those of the authors and not the BCBA.

Family Law Mediation Conference

If you are interested in Family Law Mediation, save the dates of July 13 through July 16, 2006. The Family Section of the Association for Conflict Resolution (ACR) will hold its mid-year conference on those dates at the Sea Crest Oceanfront Resort and Conference Center in Falmouth. The title of the conference is "Making Waves-Breaking Barriers." There will be stimulating workshops with national and regional speakers, cutting edge family mediation technology and the camaraderie of colleagues and friends.

The ACR is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. ACR represents and serves a national and international audience including more than 6,000 mediators, arbitrators, facilitators, educators and others involved in conflict resolution and collaborative decision-making.

If you would like further information, visit the ACR website at www.mediate.com/acrfamily/pg17.cfm. If you have any questions, please contact Ken Neumann at kenneumann@juno.com. Thank you.



"iMedia Technology's document management work in our law practice has helped us to be more productive, cut office costs, and allows us to retrieve documents from our desktop in seconds."

David Lane, Esq.
Lane, Lane and Kelly
Braintree, MA

Join iMedia Technology on May 23, 2006 at 4:30 P.M.
at The Community Bank, 704 Main Street, Falmouth for:

"Document Management for Attorneys"

At this workshop, learn how a paperless office solution will help you to:

- Reduce storage space and paper handling costs
- Provide faster information retrieval and better client service
- Eliminate misfiling and document loss

This FREE and exclusive event for Barnstable County Bar Association members also includes wine with cheese and a seminar handout package

R.S.V.P. by May 18, 2006 at (508)362-4171
www.iMediaTech.com

Word From Our New Law Librarian

In the previous issue of this newsletter, Martha Elkins announced her retirement and subsequent move to Nova Scotia. I was exceedingly fortunate to have worked with Martha at the Barnstable Law Library during the 1980s. We shared the same philosophy of service and parallel backgrounds as federal documents librarians.

Recently I was hired as the new Head Law Librarian at Barnstable Law Library. Of course, there have been many changes since the 1980s including automation, on-line resources, and on-line assistance. And we're looking forward to others here very soon - additional public access computers, WIFI, and dedicating more of our space to Massachusetts materials. I am enjoying both the new challenges and reconnecting with attorneys and others that I met here earlier!

Janet Banks, Mareda Flood and I are committed to continuing the library's long tradition of excellent service to the bench, bar and public. Please stop by the next time you're in First District Courthouse. I look forward to meeting you.

-Meg Hill, Head Law Librarian



INTER ALIA

Judge Welsh's Request-Judge Welsh is seeking volunteer attorneys interested in being placed on the list to attorneys participating in the Pre-Trial Conference Conciliation Program for Orleans Court. The clerk's office would then send a letter to these attorneys listing potential dates for them to volunteer, and the attorneys can give available dates from which the court would notify them in writing of their assigned dates. Interested attorneys should contact Mimi at the clerk's office 508-255-4700 ext.140 or Pat Eldridge at 508-255-4700 ext.148.

Office Space- Attorney Carol A. Kenney has office space available to rent in Falmouth. Please call her at 508-548-6772.

Superior Court Order-By Order of the Hon. Gary A. Nickerson, Regional Administrative Justice, effective April 3, 2006, all Barnstable County Superior Court civil pre-trial conferences will be held only on Fridays. Fifteen will be scheduled each Friday, eight beginning at 9:00 a.m. and seven beginning at 10:30 a.m. There will no longer be any pre-trial conferences on Wednesdays. In non-criminal months, criminal matters will be heard only on Fridays, and a judge will be assigned to only handle criminal matters and probation matters on that day. There will no longer be any criminal matters and probation matters heard on Wednesday in non-criminal months.

Barrister- The next deadline for the Barrister is July 15, 2006. Please send your articles to attorney Dan Neelon at dneelon@neelonwilder.com.



KELLY REPORTING & VIDEO SERVICES OF CAPE COD
 P.O. BOX 750, BARNSTABLE, MA 02630
JOHN D. KELLY
LEGAL VIDEO SPECIALIST
 MASSACHUSETTS' FIRST
 CERTIFIED LEGAL VIDEO SPECIALIST

TELEPHONE/FAX: (508) 428-3743
 E-MAIL: KRVS@MSN.COM
 NOTARY PUBLIC

PROFESSIONAL COURT REPORTING SERVICES SINCE 1985

The Shock Program: A Success Story

(Continued from Page 1)

an attractive alternative to traditional "jail house" culture.

A typical day in the Shock unit involves peer led community meetings in which participating inmates use a structured format to discuss their own efforts to change and to address issues that arise in the program. Regularly scheduled groups focusing on cognitive-behavioral approaches to self-change, substance abuse education, life skills, and health awareness education are a daily requirement. Opportunities are available for remedial education and are mandatory for participants who do not have a high school diploma or a GED. Religious services are available throughout the week, as are voluntary groups that teach anger management, parenting skills, and meditation. A.A. and N.A. groups are held with outside facilitators as well as inmates.

All of this takes place in an atmosphere of order established by clear community rules, military formations, proper attire, and inspections. Inmates are held accountable for their ability to participate in the community standards of behavior and will earn privileges as they advance through the program. They can also lose privileges for not adhering to rules.

(Continued on Page 6)

Professional Engineers and Land Surveyors

COASTAL ENGINEERING COMPANY, INC.

Orleans: 508-255-6511
 Provincetown: 508-487-9600
 Hyannis: 508-778-9600
 Fax: 508-255-6700
 www.CoastalEngineeringCompany.com

Providing solutions for the benefit of our clients and community

SIMMONS AGENCY, INC.
 Simmons.agency@verizon.net
 396 Main Street, Suite 5A, Hyannis, MA 02601
Civil & Criminal Investigations, Est. 1935
 • Approved CPCS Vendors •

Backgrounds - Corporate - Due Diligence - Discrimination - Insurance - Missing Persons - Surveillance - Worker's Compensation - And More...

Toll Free: 800-237-8230 Fax: 508-771-5353

Transaction Trackers

Bookkeeping thru Tax Preparation
Now offering forensic bookkeeping services

Contact Katherine Krouch for details at
 508-240-3200 or Email trackersk@comcast.net
 Office in Eastham, MA