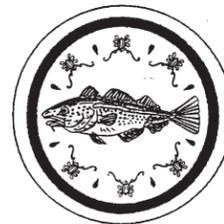




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# BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

SPRING 2007

## THANKS TO MIKE STEVENS FOR A SUCCESSFUL YEAR

The Bar Association would like to thank outgoing President Mike Stevens for a successful year at the helm. Under Mike's stewardship, the BCBA website came on-line, and at least 20 new members have joined us. The new attorneys' function produced a standing-room only crowd, which included numerous justices and other esteemed members of our legal community. We all will be awaiting another well-planned Red Sox event. Executive Committee participation has been strong, and we are well positioned to continue our growth and role in the legal community.

Mike has asked that we communicate his appreciation of the efforts and commitments of all of our Executive Committee members and officers this year, without whom continuing progress would not have been possible. In particular, Mike would like to thank Kevin Driscoll, Brian Widegren and Marybeth Holland for their work on the website; Bob Reddy for his work on recruiting new members; Carrie Woods for her active role in arranging family law seminars; Anastasia Perrino for chairing the Social Committee and events; Adrian Okon for her Law Day work; John Dale for chairing the Bench and Bar Committee; Madeleine for her invaluable daily role as Executive Director of the BCBA; and all other Executive Committee members and officers who have taken time out of tight schedules to make the BCBA a meaningful organization.

Thanks, Mike, for your leadership!

## WHAT IS YOUR LAW PRACTICE WORTH?

This article is addressed to the individual solo practitioner having a law practice in any field of law. People, locations, and types of law practices vary, and so do the values of these businesses.

Come retirement time, the solo law practice owner probably has an inflated opinion of what the business is worth. The thinking usually is that perhaps he or she has a valuable asset. Surely it is an asset on a balance sheet, but does it have a monetary value that one could actually add to his bank account?

I have spoken to several attorneys who own, or have owned, their own practice who have thought about retirement, are actively pursuing plans to retire, or have actually recently retired. Most all of these people have thought of their practice as a valuable asset that could be used to help fund their retirement. In all cases, they found that there was no willing buyer to purchase their business.

Now the reader may be asking, "What type of practice did these people have that had no residual value? My practice does have a value." Think of the personal injury lawyer having twenty cases open at the time he or she actually retires. That certainly would have a value to someone who purchased the business. Perhaps an estate planning firm that also does estate administration could have a value. However, two of the attorneys I have interviewed had this latter type of business, and neither of them

*(Continued on Page 5)*

## AN IMPORTANT NOTE REGARDING PROBATE PRACTICE FROM THE REGISTER OF PROBATE

Hidden in the statutes pertaining to Banks and Banking is Chapter 167D, section 33. This provides that a decedent's bank deposit to the amount of \$10,000 after 30 days from the date of death, and no duly appointed fiduciary has requested payment thereof, such deposit may, in the discretion of the bank, be made directly to the surviving spouse or next of kin upon presentation of the death certificate and evidence of such deposit. In many instances, this would eliminate the need to file a voluntary executor or voluntary administrator petition.

Similarly, under Allowances and Advancements, Chapter 196, section 9, a decedent's securities with a cumulative value of to \$2,100 may in certain circumstances, 30 days having expired from the date of death, be transferred to a surviving spouse, adult child or father or mother, again possibly eliminating the need for a voluntary executor or administrator petition.

Further, when a decedent leaves only tangible personal property, excluding a motor vehicle, or boat, there should be no need to file a voluntary petition as no transfer agent or bank is involved.

*Frederic P. Claussen, Register  
Probate and Family Court Department  
Barnstable Division  
April 9, 2007*



The next deadline to submit articles for the Barrister is August 15, 2007 for the Summer 2007 edition. Please send materials as e-mail attachments to attorney Dan Neelon at [dneelon@neelonwilder.com](mailto:dneelon@neelonwilder.com).

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**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.

## INTER ALIA

**New Law Office.** The Law Offices of Juliane Soprano announces the relocation of its Hyannis office to Swan River Plaza, 35 Route 134, Unit 9, South Dennis, MA 02260. Her phone number will be (508) 540-2811, and her fax number will be (508) 540-2887. Juliane concentrates her practice in the areas of Disability and Workers' Compensation Law. Her website is at [www.yourdisabilitylawyer.com](http://www.yourdisabilitylawyer.com).

**Space Available.** If you are interested in a private office with use of a conference room and a reception area, please contact Juliane Soprano at 508-540-2811.

**Welcome a New Attorney.** Dunning, Kirrane, McNichols & Garner, L.L.P. are pleased to announce that Susan Sard White, Esq. has become an associate of the firm. Ms. White is a magna cum laude graduate of Brown University and a graduate of Northeastern University School of Law. She is a member of the Massachusetts bar and has practiced law for over 17 years. Attorney White is a trial attorney who concentrates in Domestic Relations (Family Law). Welcome!

**Masters Appointments Sought.** Mark Berson, Esq., a Certified Arbitrator, American Academy of Matrimonial Lawyers, announces that he is seeking consideration as a designated Master in cases which are high conflict, protracted and/or complicated in custody, visitation, divorce of assets, alimony, probate accounting and will contests. His goal is to complete the hearing and file the reports within 90 days of the Order of Reference. Attorney Berson has thirty years' experience and can be reached at One Federal Street, Greenfield, MA 01301, (413) 774-3741, fax (413) 774-5187, [mib@markiberson.com](mailto:mib@markiberson.com).

**New Superior Court Standing Order No. 1-88.**  
The Superior Court's Third Amended Stand-

ing Order No. 1-88 became effective on March 1, 2007 and is applicable to all civil actions filed in the Superior Court on or after March 1, 2007. All civil actions filed in the Superior Court on or before February 28, 2007 shall be subject to the Second Amended Standing Order No. 1-88. The new standing order makes a number of substantive changes and clarifications to the prior standing order, particularly with respect to tracking orders, case tracks, timelines, and the impact of discovery deadlines on certain types of discovery.

**Bar Association Annual Meeting June 7, 2007.**

The next annual meeting of the Barnstable County Bar Association is Thursday, June 7, 2007 at the Ridge Club in Sandwich. Please call Madeleine at 508-362-2121 if you have not already signed up to attend.

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## CONTINUING INEQUITIES IN JUDICIAL COMPENSATION (Part 2)

In this newsletter's last edition, we discussed published data demonstrating that Massachusetts justices still are compensated at levels notably below their peers in other states with similar levels of judicial workload and case complexity, especially when cost of living is considered. The natural follow-up question is, Why? Contributions from several sources, including the Hon. Brian Merrick, suggest the following possible reasons:

1) *Decline of the Lawyer-Legislator.* Years ago there was a much larger contingent of lawyers in the legislature. This made the legislature more understanding of and sympathetic to the role of justices in our Commonwealth.

2) *The Rise of Patronage.* In years past, presiding judges controlled appointments of court officers, probation and clerk's employees and promotions in those offices. Local legislators worked closely with local judges on these appointments, and cordial relations frequently ensued. However, several years ago, the legislature stripped judges of their control over the hiring and promotion of court employees. Through a budget rider, the legislature gave the power to hire court probation officers to the state commissioner of probation-thus gaining control of patronage jobs. Indeed, according to an article by Frank Phillips in the January 3, 2005 edition of the Boston Globe, Massachusetts is the only state whose legislature dictates the spending for each individual court. The article cites a study by a former state district court judge, James Dolan, for the Pioneer Institute, a fiscally conservative think tank, finding that lawmakers had created 382 positions that the judiciary never sought, costing taxpayers \$48.3 million.

3) *The End of Votes on Legislative Pay.* The legislature often used a judicial pay raise to provide political cover for voting on their own pay raises. However, some years back then-Speaker of the House Finneran had a constitutional amendment placed on the ballot and promoted it as denying the legislature the power to raise its own pay. So described, the amendment passed. Less publicized was an automatic (unless stopped by the Governor or legislature) annual cost of living pay raise included in the amendment. The amendment did not provide the same consideration for the Commonwealth's justices.

4) *The Legislature's Desire to Control Judicial Decisionmaking.* As Congressional budget battles throughout history attest, legislative withholding of funds can be a powerful form of persuasion exerted on another branch of government to reconsider its past positions. There have been examples in each of the last three decades of the legislature's punishment of Massachusetts justices for refusing to accede to powerful legislators' patronage demands, and of legislative discussions of punishing a particular group of justices for making unpopular independent decisions.

Though legislators may argue about the details of specific actions, or the motives supporting them, the Massachusetts legislature clearly wields an unusual amount of power over our judicial branch. Perhaps we all should contemplate whether our Commonwealth government suffers from a lack of adequate checks and balances requiring attention-or a larger spotlight.

-Daniel P. Neelon, Esq.

## JUSTICE WELSH'S LETTER TO THE BARNSTABLE COUNTY BAR

Two recent articles inspired me to write about what I believe is a growing concern both for the Bench and the Bar. The first article is that which appeared in the Lawyers Weekly article [a couple months ago] concerning the Barnstable Probate and Family Court. While the article is, in my view stilted, unfair and unbalanced, it nonetheless serves to bring out the endemic and still growing problem of how the courts and the bar address the burgeoning problem of handling fairly and appropriately a significant number of *pro se* litigants. The second article is entitled, "Towards a Context-Based Civil Right to Counsel Through 'Access to Justice' Initiatives". It is authored by Russell Engler, a professor of law at New England School of Law. The issue of the constitutional right to counsel in criminal cases has, of course, long been settled. Generally, Rules of Court make provisions for appointment of counsel in criminal cases where the outcome potentially involves incarceration. In Care & Protection Proceedings, indigent persons are afforded the right to counsel at public expense, because the right to counsel in matters of custody of minor children is deemed of sufficient importance to require that counsel be appointed. I am aware of the initiatives in the Barnstable Probate and Family Court regarding the "Attorney of the Day" program. While this is a laudable beginning, it cannot address the problem of an indigent, or nearly indigent, who needs counsel in a more complex matter. This is largely true of *pro bono publico* initiatives by the local and state bar associations. It is, in my view, unrealistic to rely upon the good will of the members of the bar and associates in private law firms to provide ongoing representation of indigent persons when the matter is complex and/or protracted.

Professor Engler's article states that 70 to 90 percent of the legal needs of the poor are unmet. He suggests an expanded civil right to counsel is an

important component in the solution to this thorny problem. Traditional views of the adversary system may require some adjustments in order to meet this need. In order to ensure an even playing field, it may not be enough just simply to remain passive while the unrepresented indigent litigant, left to his own devices, forfeits rights in the absence of counsel. Not only the judge, but also the clerks, registers of probate and clerical personnel may need to become involved. The challenge is to what extent? The article suggests that unrepresented indigent litigants may be at the mercy of unscrupulous attorneys representing the other party. While the case law suggests that unrepresented are bound to follow the rules to the same extent as parties who are represented, there is little comfort in sitting supinely as litigants forfeit otherwise valid claims or defenses. This is not to advocate for an untrammelled right to appointed counsel in *all* civil cases. Certainly cases in which the right to custody is at issue would deserve priority. Also important is eviction proceedings. Although the Legal Services programs and Legal Aid Societies offer some help, it has been my experience that fiscal constraints prevent such programs from offering general assistance in this area. The promulgation and use of "canned" pleadings in which the litigant checks off boxes sometimes add to the confusion and obfuscation by the litigants.

As stated, the emergence of a civil right to counsel should be construed to extend to *all* civil matters in which an indigent person feels himself of herself aggrieved. Nor should the public coffers be opened to cases where traditionally attorneys will handle a matter on a contingent fee basis. Such fee-generating cases have long been eschewed by Legal Services and similar programs. There is

(Continued on Page 4)

## JUSTICE WELSH'S LETTER TO THE BARNSTABLE COUNTY BAR

*(Continued from Page 3)*

little to be gained in undermining the support of the organized bar in appearing to advocate for public counsel in such matters. Similarly, if an indigent litigant conjures up a claim or cause of action that is not recognized in the law, he ought not to be entitled to a publicly compensated attorney. That is not to say that *every* novel claim does not merit representation by publicly compensated counsel. Legal Services has long done this sort of thing in the past and continues to do so.

The problem is complex. The bar association ought to institute (or revitalize) initiatives to study and propose solutions to the problem of unmet legal needs.

Hopefully, our local bar association will be inspired to become proactive in this area.

- From a March 23, 2007 Letter to the BCBA by  
Robert A. Welsh, Jr.  
First Justice, Orleans District Court



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## What is Your Law Practice Worth?

*(Continued from Page 1)*

sold their business but simply went into retirement after having a shredding party at their respective offices.

If you're surprised at these comments, I would suggest that you first come up with a reasonable value for your business and show how you arrived at that value. I'm not talking about furnishings; I'm referring to client files. Put yourself in a potential buyer's shoes and ask yourself, "If I were buying, would I pay this asking price for the business?"

One method that has been used in selling a law practice is to bring in another individual to work with you. Train that person for several months and let that person see the real value of your business. You might then come to an agreed upon price before you walk out the door, leaving your associate the business. How would you get paid for the business? Would you negotiate a lump sum amount, or perhaps a lower base amount and then an agreed-upon residual fee for a specific number of years thereafter?

How would you find an individual who might be interested in your specific business? One source may be using a placement service for attorneys of the type located in most large cities. Attorneys usually have listings in such widely read sources.

Another source may be a law school placement office, not so much for law school graduates, but perhaps to try attracting an attorney who has been in a large law firm for several years and realizes that it is not what he envisioned the practice of law to be. Take the individual, for example, who realizes that he or she is not going to make partner or advance

very far in the firm, or looks deeply at the repetitive type of work he or she is doing and gets bored. In either case, the attorney becomes disillusioned and thinks of the possibility of hanging his or her own shingle. In this situation, that attorney may call his or her law school placement office and ask about listings of law practices for sale.

Another point to consider is whether selling a law practice on Cape Cod is more difficult as compared to, say, the Boston area. I think it is absolutely true that a solo practitioner would have a more difficult time in selling his or her practice in a rural-type area like Cape Cod, as opposed to the hustle and bustle of a congested city. Maybe because a potential seller would have a larger pool from which potential buyers might be interested.

Hypothetically, think about some of your clients when you tell them you're giving their file to another attorney. What do you think most clients would say? Is this attorney competent? Does he practice in this field and if so, for how long? Are you going to be involved with my case any more? Will the fees remain the same? How much have you told her? How do I know I can get along with him?

The bottom line is that the viability of selling a solo law practice is not good. There might be some exceptions out there though. Are you one of them?

I'd like some feedback on the content of this article. E-mail me at [bob.reddy@verizon.net](mailto:bob.reddy@verizon.net).

*-Bob Reddy, Esq.*