



# BARRISTER

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## JUROR MANAGEMENT IN THE SMART PHONE AGE

The goal of all trial judges and attorneys in jury impanelment is to obtain a fair and impartial jury which will decide cases based solely on the evidence presented “inside the courtroom” during the trial. That goal may be frustrated by tech-savvy jurors who on a recess, at home, or later during deliberations, can quickly google, tweet, facebook, or otherwise electronically investigate a party or witness, even the judge and attorneys, and obtain extraneous information that could seriously impair the impartiality of that juror. Upon learning of such extra-judicial investigation, the trial judge could be called upon to dismiss the juror. If the juror shared the extraneous information with one or more of the other jurors, declaration of a mistrial may be the only recourse. In the worst case scenario, “infection” of the jury panel may be discovered only after the case has been decided, raising the specter of post-judgment proceedings to determine the impact of, and remedy for, a juror’s extra-judicial investigation.

Trial judges in Massachusetts and around the country have been called upon to address these issues during impanelment and on-going trials. In a civil case, despite extensive cautionary instructions to the contrary, a juror used his smartphone to conduct internet research during deliberations. The jury foreman became aware of the juror’s conduct and reported it to the trial judge, who determined the juror had not shared the extraneous information with others. The juror was dismissed with a brief admonishment and the case proceeded to a verdict. In a more serious matter, a New Jersey trial judge discovered that a juror

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## MASSACHUSETTS ADOPTS THE UNIFORM PROBATE CODE

On March 31, 2012, Massachusetts adopted the Massachusetts version of the Uniform Probate Code (“MUPC”) which is more fully set forth in Massachusetts General Laws Chapter 190B. This new law makes significant changes to the way an estate is settled in Massachusetts.

One of the most significant changes in the new MUPC is that there is more choice and flexibility for settling an estate. The lawyer and the client can now choose among several options. The parties may have as much or as little supervision from the Court as requested.

The petitioner may proceed with a voluntary administration, an informal or a formal proceeding. If the value of the estate is \$25,000.00 or less and does not include real estate, the petitioner may file a Voluntary Administration. Informal proceedings require that the petitioner present a complete package of documents to the Court. An informal proceeding may not be allowed until at least seven (7) days have passed since the decedent’s death. The informal proceeding is commenced on a Petition for Informal Probate of Will/ Appointment of Personal Representative (MPC form 150). The same petition is used whether the decedent died with or without a will. Please refer to the checklist of all required forms on the court website noted below.

It is important to note that an informal proceeding does not determine heirs. It is also important to note that an informal proceeding is an administrative pro-

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## **“DEMYSTIFYING THE MUPC “ PROGRAMS AT THE LAW LIBRARY**

If you missed this series in Boston, here's your chance to attend locally!

The Mass. Bar Association's "Live" videos of its *Demystifying the MUPC* programs are available for viewing on a computer at the Barnstable Law Library. Programs are each 4 hours long but can be viewed in increments. Please bring your own headphones or earbuds. The five programs are:

- Part I:** Informal Probate & Appointment Proceedings
- Part II:** The "Ins and Outs" of Formal Probate Proceedings
- Part III:** Powers and Duties of the Personal Representatives and Options for Closing Estates
- Part IV:** Remedies and Protections under the MUPC
- Part V:** Estate Planning Under the MUPC-Drafting Wills & Trusts

## **MUPC SEMINAR**

The Barnstable County Bar Association is pleased to host a seminar on the new Massachusetts Uniform Probate Code (MUPC). This all day event is scheduled for Wednesday, June 27, 2012 at the Cape Codder Resort & Spa located 1225 Iyannough Road in Hyannis. Register of Probate, Anastasia Welsh Perrino, has arranged for the Trial Court personnel who have been training the Probate Court judges and staff on implementation of the MUPC to present this seminar.

The program is designed for attorneys and their staff. The registration fee, which includes lunch and materials, is \$50.00 for BCBA members and their staff and \$60.00 for non-members. The deadline for registration is June 15, 2012. There is a late registration fee of \$70.00, which applies to walk-in registrants as well. For registration, please contact Madeleine Delorey at the BCBA office (508-362-2121) or if you have questions, please contact the co-chairs, Christopher Ward (508-255-2133) or Kimberly Hogan (508-815-3856).

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## **NEWS FROM THE SUPERIOR COURT**

Assistant Clerk Magistrate Nancy Weir will be retiring on June 29th. This will be a huge loss for this office as Nancy has been here for over 35 years and will be greatly missed but we wish her well enjoying her homes in Barnstable, Sandy Neck and Maine.

Nancy's retirement will mean that the Clerk's office will be down 40% of its original staff beginning on July 2. When I took office in January of 2001, we had 18 employees and on July 2nd we will be down to 11. As we are coming into the vacation season for all court employees the staff's work load will be further impacted. The greatest impact will likely be on issuing judgments and executions. We will continue to do the best we can with the personnel we have available.

I appreciate the Bar's understanding during this difficult time as we do our best to continue to try to get cases processed in a timely manner.

I would also like to announce that Christine Higginbotham has been permanently promoted to Deputy Assistant Clerk and will be helping out when needed to cover the civil session.

As always if any member of the bar has any questions, comments, concerns or suggestions, please contact me.

*Scott Nickerson, Clerk  
Barnstable Superior Court*

## BULL'S EYE - SECTION 5-408

### AN ALTERNATIVE TO FULL CONSERVATORSHIP

The Massachusetts Uniform Probate Code Section 5-408 offers enhanced planning opportunities for clients in need of financial management but for whom a full conservatorship is unnecessary. Specifically, Section 5-408 provides probate attorneys another arrow in their quiver by authorizing protective arrangements and single transactions without the appointment of a conservator. The legislation provides an alternative to a conservatorship for situations where continued management of property is not necessary.

A practitioner may use this limited action in the absence of a power of attorney or when the power of attorney fails to authorize the specific power to accomplish the intended transaction. Examples include the sale of securities, transfer of real estate in a Medicaid planning scenario, execution of a disclaimer, funding or creating a trust, entering into a contract for life care, or pursuit of a tort claim. Section 5-408 does not allow the sale of real estate, which is still governed by M.G.L. c. 202.

While the circumstances may not require a conservatorship, the threshold question remains the same: is the protected person unable to effectively manage property or business affairs and absent such management, will the property waste or dissipate? See Section 5-401. Of course, the Court must also find that the transaction is in the best interest of the protected person.

The petition requesting a protective arrangement or single transaction, which was amended as of May 31, 2011, is the same form used for a full or limited conservatorship. Question 5 provides a "check the box" choice for protective arrangement or single transaction. The attorney will need to describe the proposed transaction in detail. Also, similar to a conservatorship, notice to interested parties is required, as well as the filing of a timely medical certificate.

In evaluating the limited petition, the Court first considers the decision the protected person would have made but for the alleged disability. Absent evidence of intent, the Court will consider the enumerated factors of Section 5-407(e): the financial needs of the protected person; the reduction of income, estate and other tax liabilities; eligibility for governmental assistance; previous gifting or support; the existing estate plan; the likely recipients of protected person's bounty; the life expectancy of the protected person; and any other factors the Court determines to be relevant. It is likely that the Court will appoint a Guardian Ad Litem to review the transaction as it relates to the Section 5-407(e) factors. Upon completion of the arrangement or transaction, the petitioner will need to file a report with the Court confirming the completion of the matter.

Section 5-408 is a drastic improvement over the prior "all or nothing" framework. It provides an efficient and cost savings procedure to remedy situations not requiring or warranting a full conservatorship.

*Christopher Ward and Lisa Sherman,  
Partners in the Trust and Estate Department of  
Latanzi, Spaulding & Landreth in Orleans*



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Marc S. Blesoff, JD



## VOLUNTEERS SOUGHT

### WE CAN

WE CAN, the Cape Cod organization that empowers women to achieve lasting, positive change provides regularly scheduled legal consultations in its Harwich Port office throughout the year. Currently, a terrific group of more than 30 attorneys volunteer for us, coming to our office for two hour time periods and meeting with four individuals for 30-minute appointments. We continue to seek attorneys for these sessions that are willing to provide pro-bono assistance approximately 3-6 times per year. We take care of all the arrangements and no follow up is expected. If coming to our office is not convenient, we can find other ways for you to help. Please consider joining our outstanding cadre of attorneys and making a difference in the lives of women on Cape Cod. We are particularly seeking those with expertise in family law; landlord/tenant; bankruptcy; tax law and employment law. Please contact Kara Duff at [kara@we-cancenter.org](mailto:kara@we-cancenter.org) or 508-430-8111.

### CCDART

The Cape Cod Disaster Animal Response Team works to develop and strengthen organized responses to emergencies affecting animals. CCDART provides public information, training, support, supplies, and personnel for the purpose of planning and preparing for, and responding to, disasters affecting household animals. In such events CCDART sets up shelters for animals at locations where shelters are set up for humans.

Volunteers are currently needed to train for and to participate in disasters such as hurricanes, snow events, or other natural or manmade events. CCDART also is interested in expanding its Board of Directors. If you are interested please contact Holly Rogers at [garretts1655@comcast.net](mailto:garretts1655@comcast.net).



## A LETTER FROM MICHAEL D. O'KEEFE, DISTRICT ATTORNEY

### NEW ASSISTANT DISTRICT ATTORNEYS

The Cape & Islands District Attorney's Office recently hired two new assistants, both of whom are working in the Barnstable District Court.

Assistant District Attorney Tucker Greene, before joining the office, was a life-long summer resident of Craigville Village, growing up in Milton, Massachusetts. He graduated from Boston College in 2007 and Suffolk Law School in 2011, focusing on public service work. He previously interned with Governor Deval Patrick's Legal Counsel, the Antitrust Division of the Office of the Attorney General, and the Middlesex County District Attorney's Office. Tucker began working for the Cape & Islands DA's office in September, 2011.

Assistant District Attorney Elizabeth Perry grew up in Harwich, graduating from Harwich High School in 2002. After graduating from Florida State University in 2006, she worked for two years as an Investigator at the New York City Civilian Complaint Review Board, where she conducted investigations into alleged police misconduct for that independent police

oversight agency. Beth attended Fordham University Law School, graduating in 2011. At that time she returned to Massachusetts to take the Bar Exam. Beth began working for the Cape & Islands in September, 2011.

### BOYS AND GIRLS CLUB AWARD

Kathy Quatromoni, Director of Community Programs for the Cape & Islands District Attorney's Office, was awarded the 2011 Lights on Afterschool Award by the Boys & Girls Club. Lights on Afterschool offers programs and opportunities, including sports, education, and volunteer work, for children. Kathy was recognized for her work in the Cape & Islands District Attorney's Juvenile and Youthful Diversion programs and the Truancy Reduction Program. Kathy is also a board member of the Cape Cod Justice for Youth Collaborative, Town of Barnstable Human Service Commission, Barnstable County Human Services Advisory Council, Community Action of Cape Cod, Cape & Islands Emergency Medical Services, and the Workforce Investment Board's Youth Council. Kathy joined the Cape & Islands District Attorney's Office in 1999.

### BCBA DISCLAIMER

The articles and content of the BCBA Barrister are not intended to provide legal advice or legal assistance to the readers. The BCBA assumes no liability for the use of the information provided herein or for the accuracy or veracity of the information which the reader may encounter in this publication.

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on a criminal case violated repeated instructions not to conduct independent research. The juror learned about the possible sentence for the crime, which he considered unjust. The judge found the juror's discovery might have motivated his "not guilty" vote, which left the jury hung. After declaring a mistrial, the judge imposed a \$500 criminal contempt sanction against the offending juror, hoping to send a message to today's contemporary juror who might be tempted by the instant access to seemingly endless amounts of information that is a reality of our culture.

The "extraneous influences" issue has been addressed by the Supreme Judicial Court's Jury Management Advisory Committee (JMAC), which I chair. Reviewing reports on this issue from jurisdictions all over the country, the JMAC has examined proposed cautionary instructions used by trial judges, posters displayed in the jury pool and deliberation rooms warning against independent research or unauthorized communication, and judicial responses to improper juror conduct in this regard. A juror who does his or her own research bypasses the rules of evidence and allows extraneous information to evade the judge's scrutiny. Such activity creates the risk that the juror is considering improper information and, consequently, increasing the chances of a tainted verdict.

In March 2010, upon the recommendation of the JMAC, Chief Justice for Administration and Management Robert A. Mulligan issued a statewide policy on juror use of personal communication devices such as smartphones. Under the policy, the judge who greets the jury pool each morning pursuant to G. L. c. 234A §65 must inform the potential jurors that they are not to use any electronic devices to obtain or disclose information relevant to a case. These instructions are reiterated to impaneled jurors, along with more standard prohibitions against discussing the case with others or reviewing news reports about the case.

I have found that, in addition to formulating jury instructions that contain prohibitions against use of electronic devices to investigate a case, jurors are more likely to abide by my cautionary instructions when I provide the jury with the full rationale against

such use. I constantly stress to jurors the importance of deciding a case "fairly and impartially without exposure to extraneous influences that could somehow affect the outcome of a case." In addition, I remind jurors that if they were relying on a jury to decide their own fate, they would want a jury that did not engage in improper conduct so as to ensure a true and just verdict. Nevertheless, with the proliferation of electronic communication and research tools, and the growing reliance of our citizens on those tools to obtain information and make decisions, the struggle to keep outside information from seated juries will doubtless continue and requires constant vigilance by the court.

*Robert C. Rufo*  
*Associate Justice*  
*Barnstable Superior Court*

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ceeding and there is no court hearing. A court official now referred to as a Magistrate will review the paperwork and may approve, deny, or take no action on the informal probate. The filing of a formal proceeding stays the Magistrate's ability to act on an informal proceeding, and therefore, the Magistrate may take no action on the informal petition. Once the Magistrate approves the informal petition, the petitioner must publish once in a newspaper approved by the Register of Probate within thirty days after the Order allowing the informal probate. Proof of Publication is not required to be filed with the court. Informal proceedings may not be filed if an heir or devisee (devisee now refers to both a legatee and devisee in a will) is a minor or an incapacitated person unless there is a guardian or conservator appointed for that person. In addition, an informal proceeding may not be filed if the heirs are unknown or an identified heir is of parts unknown. If there are cancellations or alterations to a will, an informal proceeding may not be filed. The will filed must be an original will, not a copy. An interested person on active duty in the military must assent in order for an informal proceeding to be filed.

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Another way to proceed under the MUPC is to file a formal proceeding. The filing of a formal petition is the only way to challenge an informal petition. If a Magistrate has not acted on the informal petition, the filing of the formal petition stays the ability of the Magistrate to act on the informal petition. The informal petition may be acted upon later if the formal proceeding is dismissed. The formal proceeding is on the same petition whether the decedent died with a will or without a will, MPC form 160. The formal proceeding is similar to previous probate practice in that a notice is produced by the court and the petitioner must serve it on all interested parties and publish before the formal order is allowed. If the matter is uncontested, it may be signed by a Magistrate. If the matter is contested, a pretrial conference will be scheduled by the court. Only formal proceedings may be used to determine intestacy and heirs.

In both the informal and formal proceedings, the personal representative may act when letters of appointment are issued by the court. There are no longer certificates of appointment. If you would like a letter of appointment, you must request one from the court. The fee is \$20.00 per letter. In both informal and formal proceedings, the personal representative is not required to file an inventory and accounting with the court. However, the personal representative must prepare an inventory and accounting and send them to all heirs (if decedent died without a will) and devisees (if decedent died with a will). In an informal or formal proceeding, the personal representative may, but is not required to, submit an inventory and account with the court for filing purposes. If the personal representative chooses to file the inventory and account with the court, the personal representative must file using the court promulgated inventory and account forms which can be found on the court website.

Once an informal or formal proceeding is filed, an interested person may at any time request further supervision by the court (Supervised Administration of Probate). In addition, there are new proceedings to obtain a temporary appointment (Special Personal Representative) and to close an estate if the personal representative or an interested party seeks court in-

volvement. However, it is important to keep in mind that the MUPC is based on the concept that the interested parties may have as much or as little Court involvement as requested.

All of the new MUPC forms are available on the Barnstable Probate and Family Court website at [www.barnstablecountypfc.com](http://www.barnstablecountypfc.com). You may access the Massachusetts Probate and Family Court website from this website. I highly recommend that you refer to the MUPC Estate Administration Procedural Guide and the training materials which are available on the court website.

It is interesting and challenging for judges, lawyers, and court staff to learn new law and procedure. As more cases are filed in the court, it will take time for case law and procedure to evolve. The Court will assist you as much as possible. However, please remember that we are all learning the new practices and procedures together.

*Anastasia Welsh Perrino  
Register of Probate*



## FOR YOUR DIARY



**JUNE 27, 2012:**

BCBA sponsored MUPC seminar, Cape Codder Resort and Spa,  
registration deadline - June 15, 2012, [bcba@verizon.net](mailto:bcba@verizon.net)

**JUNE 28, 2012:**

Annual Meeting, Seaview Restaurant, Dennisport, 6 P.M.

**SEPTEMBER 15, 2012:**

Submissions for the next Barrister publication are due –  
send to [lmfarmer@garnickscudder.com](mailto:lmfarmer@garnickscudder.com)

**BARNSTABLE COUNTY BAR ASSOCIATION**

**P.O. Box 718  
Barnstable, MA 02630**

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