



# BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

SPRING 2020

## GREETINGS FROM THE BCBA PRESIDENT:

Never did I imagine a little less than a year ago when I became the President of the Bar that the world would have the new reality that we are living in now. In my earlier messages, I encouraged lawyer wellbeing and camaraderie, and now I am just hoping that each of you stays healthy and well and that we all come out on the other side of this having learned a little more patience, tolerance and awareness of how interconnected we all are.

As attorneys, we are resilient, we can multitask, and we are ready to adapt. This has been necessary over the last few months, and I am impressed by what I have seen. The courts are adapting to a new reality, learning to host remote hearings, conference calls and zoom hearings. Attorneys advocated for and were awarded a bill that allows for remote notarization and service by email has become an acceptable form of service of process. As attorneys, we are also accustomed to a fast-paced reality; we type A personalities thrive with the urgency of oral arguments or we burn the midnight oil in order to submit a memorandum or motion as a deadline quickly approaches. This new reality is difficult, and many are struggling, both personally and financially. As members of a small bar association and a community that is currently in need, we must be understanding and helpful to our brothers and sisters in the law and work together. By supporting one another, we can ensure that we all recover in the strongest manner possible.

There has been much talk about the heroes in this crisis and there have been many. The health care workers are invaluable, and first responders, security staff, delivery drivers and grocery store workers are clearly working in a manner we never fully appreciated. Additionally, the courts and my fellow attorneys, you have also been heroes. Heroes for staying home in some cases, and heroes for going to work in others. The staff at the various courts have been tasked with weighing justice and the need for an immediate hearing with the necessity of public safety. In the criminal sector, our Judges are now making decisions balancing the public's safety or the risk of flight from court with the risk to the accused of becoming seriously ill and even possibly dying.

As a bar association, it has been our goal to try to support you all during this time, bring to you information that is necessary for our members, and provide updates as quickly as possible. There have been continuous memoranda from the courts that we are trying to forward to you. We have tried to advocate on behalf of our members for small business emergency funding and the passing of necessary legislation to keep our businesses functioning in a remote world. We will keep doing this work to help our members, and I encourage all of you to reach out to us if we can be of assistance in some way.

For the first time in the history of the bar association we are in the process of planning a virtual annual meeting as necessitated by the pandemic. Our profession is intensely social, and we rely on our social con-

nections daily to do our best work. We need to maintain these connections as much as possible. We will have that time again soon to gather together but for now we must prioritize public safety and avoid public gatherings. We are hosting Zoom meetings with our First Justices and Court Officials to try to answer questions for our members on the best manner of practice in today's circumstances. We will continue to find new ways to support our members in a manner that helps our profession and our local bar.

In closing, let us all remember things will improve. If we can take from this something that changes each of us for the better, then we can make the most of this struggle and we will perhaps come out being a stronger, more supportive bar. I have learned that we need each other and as such, perhaps we will each be more respectful and understanding. A smile to pass to others when we do not have to wear a mask might just make someone's day!

Stay healthy and well!

Holly A. Harney, President  
2019-2020



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DURING COVID-19**

**\*Clients call the Court and calls are  
then distributed to the LOD  
for response. Please consider helping  
people in these difficult times.**

**FOR MORE INFO, CONTACT  
HOLLY HARNEY AT  
[BCBA@VERIZON.NET](mailto:BCBA@VERIZON.NET).**



# LEGAL RESOURCES

**NEED LEGAL RESEARCH ASSISTANCE?  
THE BARNSTABLE LAW  
LIBRARY STAFF  
OFFERS HELP**

We hope that you and your loved ones are all staying safe. This is a very difficult time for our community. Even though Barnstable Law Library is closed to the public, the library staff are working remotely to assist patrons with their legal information needs. Please feel free to contact us at [barnstable-lawlibrary@gmail.com](mailto:barnstable-lawlibrary@gmail.com) or telephone (508) 362-8539. Staff check both email and voice mail throughout the day.

Library materials are not available for circulation until we reopen. The due date for all books currently in circulation has been reset for May 15, 2020.

And finally, both Lexis and Westlaw have extended temporary free access to their databases.

Go to <https://tinyurl.com/ya3qc7dm> for instructions on how to sign up.

*Hoping we will be able to see you all soon!*

*Stay safe.*

*Suzanne & Mitzi*  
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<https://www.mass.gov/orgs/trial-court-law-libraries>  
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# Court Report: The Barnstable County Superior Court

## **Greetings:**

I want to thank the Barnstable County Bar Association for giving me this opportunity to address the bar with what is going on in Superior Court.

## **New Staff Member:**

I am happy to introduce Kathryn Kock, our new Case Specialist in my office. She will be the main cashier and will also be handling new civil filings and other pleadings. Please welcome Kathy to the office. She is happy to help anyone with questions.

## **E-Filing:**

The E-filing pilot in the Superior Court has started in Barnstable Superior Court. We are accepting all types of civil cases and filings. We are on a reduced staff so please be patient as it may take some time to get to your filing, but if accepted, it will be docketed on the day it was received. I am pleased that Barnstable Superior Court was chosen for this pilot as it shows our commitment to be on the forefront of court technology and the confidence court administrators have in myself and my office. If you are filing a 9A package, please review the notes on Tyler's homepage because if the correct procedure is not followed, we will reject the filing. Any questions, you can contact my office manager John Dale at 508-375-6682.

## **FTR Requests:**

It is the attorney's responsibility to write down the start and end times of their cases if they want us to approve FTR requests. My staff will not accept FTR request that state from 9-1 or worse

9-4 as times to look for their hearing. We do not have the time to listen through hours of recordings to get to your case. Therefore, if you are not more specific so we can easily find the case, **WE WILL REJECT THE REQUEST.**

## **Scanning of Documents:**

Also, since we are now scanning all documents, I am asking your help to not staple pleadings but to use paperclips. Staples do not go through our scanners and it takes time to remove the staples so we can scan items in.

## **Notes from Our Recent Virtual Bench and Bar:**

Please download the Polycam app onto your phone or tablet (it does not work on laptops). This is the software that the Superior Court is currently using for video hearings. If you have criminal cases with clients in custody, those cases will be called at 10 AM to allow the jail to make accommodations. All others should call in at 9 AM. If you need call-in information for telephonic hearings, please contact me.

Barnstable Superior Court has e-filing! Please use it. Because Barnstable has e-filing, the clerk's office is not accepting civil filings over email.

Civil hearings are currently being scheduled on Tuesday and Thursday afternoons in fifteen minute increments.



Photo credit: John Phelan, [https://commons.wikimedia.org/wiki/File:Barnstable\\_County\\_Courthouse,\\_Barnstable\\_MA.jpg#file](https://commons.wikimedia.org/wiki/File:Barnstable_County_Courthouse,_Barnstable_MA.jpg#file).

Though jury trials have been rescheduled and hope to restart in July, the Barnstable Superior Court will not be scheduling any civil jury trials until September. The courts are actively discussing how to handle anticipated trial issues.

If you are encountering issues with another attorney regarding deadlines due to the tolling of deadlines set by statute, court rule, standing order, guideline, or other court order, please remember that a Rule 26(c) protective order is an option.

As always if any member of the bar has any questions, comments, concerns, suggestions, please feel free to contact me at 508-375-6684 then press 6 or by email at [scott.nickerson@jud.state.ma.us](mailto:scott.nickerson@jud.state.ma.us).

I wish everyone a Happy and Healthy Spring!

Scott W. Nickerson,  
Clerk of Courts  
Barnstable County



# Young Lawyers' Division Update

Dear BCBA community,

I hope you and your family are safe and healthy. In this ever-changing and evolving situation, it is important to stay up-to-date on new developments with the courts and technology. Like/follow the Barnstable County Bar Association's Facebook page for information about new court policies and procedures. In addition, take a look at the SJC's Committee on Lawyer Well-Being, which published a webpage with a number of resources, including a "Simple Guide to Remote Work", information about legal ethics during this pandemic, and the TechLine – a phone line staffed by volunteer attorneys to provide other attorneys with assistance on how to operate a virtual law practice. See [lawyerwellbeingma.com/news](http://lawyerwellbeingma.com/news) for more information.

As many of you may know, the Board of Bar Examiners has postponed the next bar examination from July 28-29 to September 30-October 1, and many, if not all, of the law schools have cancelled graduation this spring. I'm sure that you can remember the feeling of accomplishment upon receiving your law school diploma and then the relief upon finishing that last part of the bar examination in late July. The students graduating from law school this spring will not have these same experiences, plus

**NEW TO THE BAR? NEW TO  
CAPE COD? YOUNG AT HEART?  
JOIN THE BCBA'S YOUNG  
LAWYERS' DIVISION!**

they are facing very uncertain employment prospects. Chief Justice Gants wrote a letter to the members of the Massachusetts Bar on March 30, 2020, which I echo here: "do what you can to allay the concerns of these future members of the Bar."

Be sure to check out the Spotlight feature in this edition of *The Barrister* to learn more about Attorney Irie Mullin. The YLD hopes to be back soon with socials, CLEs, and networking opportunities. In the meantime, please continue to follow the advice of medical professionals and experts and stay safe. You can always reach the Young Lawyers' Division via email: [BarnstableYLD@gmail.com](mailto:BarnstableYLD@gmail.com).

Crissa A. Morton, Esq.  
Chair, YLD  
BCBA



## BARNSTABLE COUNTY BAR ASSOCIATION LAWYER REFERRAL SERVICE

<https://barnstablebar.org/referrals>

The BCBA receives calls from prospective clients in need of a lawyer specializing in a particular area of law. Our service attempts to bring together the prospective client with a participating member of the Lawyer Referral Service.

To fully implement our goal of providing a full range and diversity of legal services within the pool of participating lawyers, a reciprocal commitment to the Lawyer Referral Service is a prerequisite. As such, we kindly invite all members of the Barnstable County Bar Association to participate in the Lawyer Referral Service.

Go to <https://barnstablebar.org/referrals> for additional information and to become a part of our Lawyer Referral Service.

Every Village Has an Idiot.

There is a regular visitor to my home, at all daylight hours. It is a small bird, whose kind is a mystery to me (even though I have a half dozen bird books lying around, obviously collecting dust).

It flings itself against the window over my kitchen sink. In other circumstances, it might annoy, however, as the only sighting of something with a beating heart coming closer than six feet, it gives me a laugh each and every time.

Sometimes you need an idiot.

- Attorney Chris Peterson  
cjplawoffice@yahoo.com



#### Attorney Lois Farmer discusses working from home:

The dog is Brady and the cat is Roxie. They are both 8 years and they are great cohorts – for support, entertainment, and to cause havoc with my paperwork. I am enjoying working from my extra bedroom which now functions as den, dressing room and office, and occasional cozy reading room. My dog and cat are jealous of the attention I pay to my work so when it is time, I tell them, “I have to go to work:” the dog runs into his

bedroom crate for his treat; the cat follows him into the bedroom for her treat. I close the bedroom door and peace reigns for hours. Luckily.

In addition to other work, I am very occupied with appeals. Throughout my career I have handled appeals in Massachusetts and the First

Circuit. I am currently very active in handling appeals for CPCs on the family law panel and on the mental health panel. In fact, on April 6, I argued a mental health case “before” the Supreme Judicial Court by telephone!!! In total the argument took place from 10 different locations (hint – don’t use speaker phone function – causes too much interference). I have handled other cases before the SJC but this method was certainly unique. In addition to the opposition brief,

there were 4 *amici* submissions and although the hearings generally take a half hour, this one was one hour and nine minutes! The surreal part of the hearing came after my appellant’s argument concluded and I just moved over to my recliner, put my feet up, and relaxed while listening to the opposition. All the while, my pets were quiet and content in the other room.

*Best wishes to the Bar.*

-Lois M. Farmer, Esq.

## LAWYERS WITH DOGS (and other co-workers at home)



#### Attorney Jenny Margeson writes:

To the right is a picture of my paralegal. Popcorn comes to work to supervise and make sure everyone *Shepardizes* their cases. He also likes to remind everyone of IRAC and eat cookies. And lately, since we don't have court, I have found a few more hours to spend time with my horse Calypso (above). She is great at maintaining social distance and sanity.





## Young Lawyers' Division Spotlight

### This Issue Featuring: IRIE MULLIN

#### A WASHASHORE, HERE TO STAY

In December, 2012, Irie Mullin (then Dunne) found herself relocating from the greater Boston area to her family vacation home in Yarmouth, Massachusetts to take a position as a law clerk to the justices of the Barnstable Superior Court. The Annie Dookhan drug lab scandal had just come to light, and Irie was amongst the many individuals hired by the Commonwealth to deal with the aftermath. Though originally assigned to assist the Justices with Dookhan-related cases, Irie's work ended up encompassing both civil and criminal matters, and she immediately proved herself invaluable to the Barnstable County Superior Courthouse.

Seven years later, in August, 2019, Irie, who by that time was affectionately known as Mullin, J., took a position with the Town of Falmouth as Associate Town Counsel. By then, Irie had become known around the Superior Court for her treadmill desk (which was even taken for a 'test drive' by Chief Justice Ralph Gants

while visiting the county), her propensity for adopting blind cats (ironically named Winkie, Radar, and Scout), and her home-pressed juice (she owns an industrial grade juicer!). As Associate Town Counsel, Irie advises the Town on a wide variety of general municipal practice issues, and represents Town boards, commissions and officials in land-use, permitting and licensing litigation, as well as administrative proceedings.

Irie, a washashore, did not have many connections when she moved to the Cape. She quickly began volunteering to collect plastic and other debris from beaches with Cape Cleanup, and attending First Parish Brewster Unitarian Universalist. Eventually Irie met her husband Sean, a Cape native cycle mechanic and structural engineering student who was living in Brewster at the time. Together, they moved to East Sandwich, purchasing a gorgeous but problematic amateur-built house in the woods, and promptly beginning a never-ending series of home repairs and garden projects. In her free time, which she denies she has, Irie likes to ride gravel and mountain bikes, paddleboard on the Bay

and marsh, hike on the Outer Cape, and read modern American fiction by emerging writers.

Irie is the youngest of three. She grew up in New York with her two older sisters. As a child, she spent hours reading about all topics because her parents ascribed to a no-television lifestyle. Growing up, she enjoyed playing tennis, rowing crew, playing harp and percussion in an orchestra, and co-captaining her high school Speech & Debate team.

After high school, she attended Princeton University and graduated with a degree in Psychology and Neuroscience, *magna cum laude*. In 2012 she obtained her J.D. from Boston College Law School, *cum laude*. From there, the rest is history. The Cape called her to our sandbar and she hasn't left.

By Sara Kohls, Esq.



## LAWYERS WITH DOGS (CONT'D)



From left: Scully, Mozi (who passed in March 2020), and Mazy who often took Attorney Nicole Ouellette on very long walks whether she liked it or not.

\*BCBA does not exclude other pets such as cats, horses, or pigs, etc. To submit your photo, contact [nouvellette@publiccounsel.net](mailto:nouvellette@publiccounsel.net).



#### Double Trouble:

Attorney Beth Kliber's collies. Jack (left), whose lineage includes the famous "Lassie," and Finn make excellent home-office mates.

**HELP YOURSELVES,  
HELP YOUR CLIENTS,  
HELP THE COURTS**

COVID-19 has everyone feeling anxious and stressed. For those tied up in litigation, as parties and attorneys, the stress is even greater. The courts are closed and may stay closed for several months. When they reopen, it likely will not be business as usual. What will the "new normal" look like? You can only imagine the confusion and delay in scheduling hearings and trials.

In Barnstable County we are very fortunate to have several experienced and professional Mediators, Conciliators and Arbitrators who are qualified to assist you, the attorney, in helping your clients resolve their legal issues without waiting for the courts to resume full access. These professionals are not just now coming on the scene. They have been here all along, providing Alternate Dispute Resolution services and similar services as a Parent Coordinator and a Master.

Many of you have availed yourselves of these services in the past and

the courts have, in many circumstances, suggested and even recommended the use of one or more of these services to resolve your cases. To no one's surprise in the legal community, nearly every legal problem can be solved without the necessity of a public trial. Matters ranging from divorce, custody, division of assets and support are commonly mediated and conciliated, but did you know these issues can be resolved and finalized through Arbitration, (also called Private Adjudication)?

These services are not limited to Domestic Relations matters. They are widely and successfully used to resolve and finalize conflicts involving Estate and Trusts, Contracts, Real Estate, Business, Employment and other civil matters.

In these unprecedented times, clients need closure, rather than waiting for a hearing or trial. You can help them, and help the Courts relieve what surely is and will continue to be a log jam, by initiating an ADR process. This will also assist the Courts as they try to find their "new normal". Experience tells us that ADR lessens a client's anxieties and creates an ap-



preciation in them for your assistance in finding a quick and non-public resolution to their legal problems.

Prior to the current situation many ADR Professionals used video and telephonic means to conduct ADR. Under our current situation, these ADR Professionals are well-situated to assist you and your clients in a timely and expeditious manner.

From a business prospective, lawyers often get paid upon the conclusion of the case. ADR can and will accelerate that process. While accelerating the process, it also decreases accounts receivable.

If you do not know ADR Professionals, you can search for them by typing Mediation Barnstable County or Arbitration Barnstable County into your computer's search engine.

*Wishing you and your families safety and health during these difficult times,*

Authored by Russell N. Wilkins, Esq.  
Edited by Hon. Robert A. Scandurra,  
(Ret.) and Ann E. Rascati, Esq.



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# Abridged Summary of the Moratorium on Evictions and Foreclosures during the COVID-19 Emergency



On April 20, 2020, Governor Baker signed an emergency law that places a moratorium on many evictions and foreclosures during the current COVID-19 health crisis (the "Act"). I would like to take a moment to highlight key provisions of the Act and its impact on our community.

- ◆ The Act is an emergency measure scheduled to last for 120 days, or 45 days after Governor Baker ends the state of emergency he put in place on March 10, 2020, whichever is earlier. The Governor may extend the Act for 90-day periods.
- ◆ The Act prohibits all "non-essential" evictions of residential and small business tenants, including evictions for non-payment of rent. The only exceptions are evictions for criminal activity or conduct that endangers the health and safety of residents or the public.
- ◆ For a commercial tenant to qualify as a small business, it must have less than 150 full-time employees and operate only in Massachusetts.
- ◆ It is now illegal for owners of residential property to send any notice telling tenants to vacate the property or otherwise attempt to terminate a tenancy.
- ◆ The Act bans filing non-essential summary process cases against both residential and small business tenants, as well as the enforcement of already-issued executions for possession.
- ◆ Although a small business whose tenancy terminated prior to March 10, 2020, or that was already in default, receives no eviction protection, the courts are

not hearing all non-essential summary process complaints and have tolled all applicable deadlines.

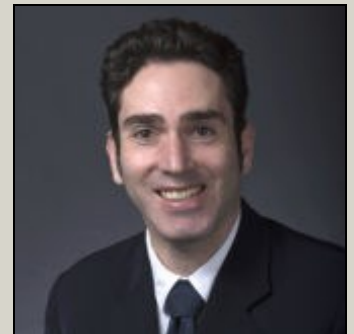
- ◆ Homeowners with a mortgage on their primary residence who are experiencing financial hardship in the current health crisis are entitled to a forbearance of their mortgage payments up to 180 days without penalties or interest.
- ◆ A powerful feature of the Act prohibits creditors from initiating or continuing foreclosure proceedings against a homeowner's primary residence.
- ◆ Keep in mind, however, that the Act does not block foreclosures of commercial property or residential property that is not an owner's primary residence. Creditors may continue to pursue such non-judicial foreclosures.

As you can see, although the Act contains strong protections for tenants and homeowners in the current health crisis, it does not apply to any business that does not qualify as a small business, and offers no foreclosure protection for commercial properties or residential properties that are not the owner's primary residence.

*Roman Brusovankin is a litigation associate with LaTanzi, Spaulding & Landreth.*

[rbrusovankin@latanzi.com](mailto:rbrusovankin@latanzi.com)

Ph: 508-255-2133



## BCBA ANNOUNCES VIRTUAL BENCH & BAR EVENTS

Want info on court proceedings?  
Attend our virtual events:

- **May 11 at 2:00 pm (District)**
- **May 14 at 3:30 pm (Probate)**

These sessions will address the functioning of courts during the COVID-19 crisis. Participants can submit questions to panelists.

Our May 7th Superior Court Event was a success! Thank you Judge Rufo, Judge Gildea, Judge Perrino, and Clerk Nickerson.

Here are some takeaways from the Superior Court Bench & Bar:

- The key is communication between the bench and bar and members of the bar.
- Please download the Polycom app onto your phone or tablet (it does not work on laptops). Superior Court is using this software for video hearings. Clerk Nickerson is circulating info for telephonic hearings.

- Use e-filing for civil cases in Superior Court. They are not accepting civil filings by email.
- Civil hearings are scheduled on Tuesday & Thursday afternoons in 15 min. increments.
- The Barnstable Superior Court will not be scheduling any civil jury trials until September.
- If you have issues with another attorney regarding deadlines, Rule 26(c) protective order is an option.



## UPDATE FROM THE BARNSTABLE PROBATE AND FAMILY COURT

Since the Supreme Judicial Court closed all Courts in the Commonwealth to the general public on March 18, 2020, the Barnstable Probate and Family Court Register, Registry Staff, Judges, Judicial Staff, Chief of Probation, Probation Staff and Court Officers have worked together as a team to come up with new ways to conduct court business to adapt to our new "normal."

In response to the Supreme Judicial Court Order dated April 27, 2020, and the most recent Probate and Family Court Standing Order 2-20 as Amended May 4, 2020, (See <https://www.mass.gov/probate-and-family-court-rules/probate-and-family-court-standing-order-2-20-court-operations-under#introduction>), the Barnstable Probate and Family Court will gradually begin to hear more case types virtually in whole or in part where it is practicable to do so. These case types will be heard virtually by Zoom or by telephone. The Court is trying to balance the number of case types heard with reduced staffing levels to allow the staff to keep up with the work while maintaining social distance per the CDC guidelines.

The Registry and the Judges at the Court have obtained separate Zoom licenses. The Registry is working on

plans to have virtual question and answer sessions by Zoom on specific days of the week for certain case types. We hope to work with the Bar Association to continue the very successful Virtual Lawyer of the Day Program as it now exists by telephone, and possibly to add Zoom capability using the Registry Zoom Account. More information on this will be provided at a later date as plans are being developed. Thank you to all of the lawyers who volunteer their time to assist the Court as Lawyer of the Day. It is very much appreciated by all of us at the Court.

The Judicial Branch is currently conducting court hearings virtually by Zoom or telephonically. The Probation Department is currently conducting Dispute Interventions by Zoom. The Registry staff is divided into two teams. The teams rotate by working three days in the office and then, two days remotely in order to maintain ten or less people in the Registry Office at any one time. The Registry staff is busy in the office conducting court business in emergency and non-emergency matters, including accepting the filing of pleadings and other documents, scheduling and facilitating hearings, issuing orders, answering phone calls and emails from the lawyers, litigants and the general public and

any other duties necessary to conduct court business.

Cases that were scheduled beginning May 4, 2020, have been reviewed by the Judicial Case Manager and Assistant Judicial Case Manager. Those cases will be rescheduled with a new date or they will be rescheduled for the same date with a new time so that the case can be heard virtually. You will be receiving a Notice from the Registry as to the date and time of your case with instructions to call or Email for your virtual or telephonic hearing.

Although this has been a very difficult period of time for all, the fact that Court was closed created an opportunity for us to come up with new and innovative ways to conduct court business which will benefit us all.

I want to thank all members of the Barnstable County Bar for their patience and understanding during these very difficult times. If you have questions or concerns, please feel free to reach out to me at (508) 375-6717.

I hope that you and your families are safe and well.

Anastasia Welsh Perrino, Esq.  
Register of Probate  
May 2020



### Mary E. Phillips, RPR

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Contact Nicole Ouellette at [nouvellette@publiccounsel.net](mailto:nouvellette@publiccounsel.net) or [bcba@verizon.net](mailto:bcba@verizon.net).

## **BARNSTABLE COUNTY BAR ASSOCIATION**

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**Interested in joining the BCBA  
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**We are seeking an addition.**

**For more details, contact one of our members  
or send an email to [bcba@verizon.net](mailto:bcba@verizon.net).**

**Not a member of the BCBA?**

**Membership: <https://barnstablebar.org/membership>**

**Admitted 2019/2020: \$0**

**Admitted 2016-2018: \$50**

**Admitted Prior to 2016: \$100**

**Government or Public Defender: \$25**

**Bar Advocate and Legal Aid Attorneys: \$25**

**Retired or over 70 years of age: \$0**