



BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

Greetings from the BCBA President

"Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness."

- Rev. Dr. Martin Luther King, Jr.

When I last wrote to you, we mourned the loss of 200,000 lives in the U.S. and 1 million worldwide to COVID. Just three months later, those numbers have doubled. We have also witnessed a tragic, destructive attack on the Capitol, and we fear for a divided nation. If the days still feel dark, please remember that we, as members of the Bar, have so much power to rise above them and bring light to others in our community...and in doing so illuminate ourselves. What can you do right now? From home? A lot!

Due to the pandemic, the Equal Justice Coalition has converted its annual Walk to the Hill into "Talk to the Hill" on **January 27th** (See pages 4-5). A compact web broadcast and breakout room session will provide a renewed call for State financial support of civil legal aid in Massachusetts. Though we cannot gather in person, you will still be connected with your legislators

and their staff. BCBA is a proud co-sponsor of this event so please join us and click [here](#) to register. When registering you'll be asked to select your state senator from a drop-down menu to help us schedule your legislative visits.

The Barnstable Probate and Family Court is working hard to assist pro se litigants with timely and efficient access to justice, but they are in desperate need of additional **Lawyers of the Day (LOD)**. Please consider volunteering to take 3-5 calls even once per month from pro se litigants. All communication begins with the Court staff and is forward to the LOD volunteer on their assigned day. If you can spare just a few hours of your time you would be doing a great service to our community and to the Court. Please contact Madeleine Delorey at bcba@verizon.net to volunteer.

What can BCBA do for you? Starting January 13th, we began hosting **Quarterly Round Tables** via Zoom for our members with Judge Ryley and Judge Ordonez. This is a great opportunity for a small group of attorneys to speak with the Judges regarding various topics of concern and to ask individual questions. We have also nominated 9 members, who have been practicing

10 years or less, to attend the United States District Court for the District of Massachu-

setts **Young and Emerging Leaders of the Bar**

Roundtable on March 11th. These attorneys will meet in a small group with federal judges to discuss hypothetical legal scenarios. We look forward to hearing from them about what they learn.

We hope you were able to attend the **Land Court/Probate Court Best Practices and Pitfalls Panel** on October 8th with Anastasia Welsh Perrino, Register of Probate, Land Court Representatives Christina Geaney, Chief Title Examiner, Hon. Jennifer S.D. Roberts, and Deborah J. Patterson, Recorder, and Attorney Bonnie-Jean Nunheimer. This one-hour session was jam-packed with useful information, but if you missed it you can watch it and obtain all of the referenced documents [here](#). A BIG thank you to the panelists for their time and invaluable practice pointers for attorneys.

I look forward to seeing you again soon.
Stay safe and hopeful.

Ingrid Epperly
President 2020-2021



Charlie Welsh; An Appreciation

Charles F. Welsh, former First Assistant Clerk-Magistrate of the Orleans District Court, passed away peacefully at home after a long battle with Cancer on December 5th, surrounded by his family.

By Judge (Ret.) Brian Merrick

For 54 years Charlie, as he was universally known by friends, colleagues, judges, prosecutors, defense lawyers, police officers and the public seeking aid at the court, provided caring assistance to all comers with wisdom, judgment, compassion and humor. I doubt there is a person reading this newsletter who did not know Charlie and consider him a friend. As one of those friends, it was also my honor and pleasure to work with Charlie as the only First Justice of the Orleans Court appointed since 1914 not named Welsh. The British philosopher G.K. Chesterton wrote, "[T]he horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives, and policeman, is not that they are wicked (some of them are good), not that they are stupid (several of them are quite intelligent), it is simply that they have got used to it. Strictly they do not see the prisoner in the dock; all they see is the usual man in the usual place. They do not see the awful court of judgment; they only see their own workshop."

Continued on page 2

Continued from page 1

Charlie was the very antithesis of Cherterton's magistrate. A homeless alcoholic received the same focused attention and kindness as a famous Boston lawyer. If anything, he made a more conscious effort to reach out to those who were intimidated by going to court and afraid to seek help.

From his accustomed perches behind the Clerk's bench in the First Session, at the counter in the Clerk's Office and his own office just inside the door of the Clerk's Office, Charlie was available to advise anyone or pass a friendly few minutes with conversation about current events, often spiced with observations from his encyclopedic knowledge of Massachusetts political history. Charlie managed the First Session smoothly with patience and efficiency, borne of his great experience and temperament. Golfers have an expression, "course knowledge," to describe the edge a golfer has when playing his home course. Charlie often knew the people appearing before him and often their families and history. He knew the lawyers, police and the local politics of the communities in the district. He unobtrusively made that "course knowledge" available to any visiting judge who had the wisdom to listen. While others went to lunch during the First Session one o'clock recess, Charlie remained and conducted Magistrate's hearings and Traffic Appeals. He was totally devoted to the Court.

As Attorney Jay W. Carney Jr. put it in a recent note to Charlie's wife, Liz, "He was a perfect gentleman to everyone including the homeless souls who had come to court. He was old school in all the best ways. The court has not been the same without him."

A lifelong resident of Provincetown, Charlie was born on July 11, 1945, the son of Judge Robert A. and Alma Welsh. He attended Provincetown High School and Boston University. Besides Liz, he left five children and his adored ten grandchildren. He never spoke of his personal life, an omission readily remedied by his closest pal since the Fourth Grade in Provincetown, Orleans Chief Probation Officer Lenny Enos. As Lenny tells it, Charlie not only reached out to homeless, addicts and other unfortunates at the Orleans Court, he performed a thousand quiet acts of private charity in his community. In one example, he drove a man who, had lost his license, to work every day. He and Liz provided home care for years for two disabled relatives.

It is perhaps the central genealogical fact of Charlie's life that he was the grandson, son, brother and uncle of First Justices of the Orleans District Court and its predecessor the Second District Court of Barnstable. Charlie was fond of telling the story of a Boston reporter who had come down to cover a high profile arraignment. "Welsh?" she said suspi-

ciously, while reviewing papers in the Clerk's Office, "Are you related to the judge?" "Yes," Charlie replied with his puckish wit. "He's my brother. But he didn't appoint me. My father did."

The Judges Welsh have made a unique and remarkable imprint, but for 54 years, Charlie was the heart and soul of the Orleans District Court.

By the Honorable (Ret.)
Judge Brian Merrick



HELP THE BCBA LAWYER OF THE DAY PROGRAM!

LOD IS CONDUCTED VIRTUALLY

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

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POCKET PARTS

An Update from the Barnstable Law Library

Greetings from the Law Library,

In coordination with the Courts' mandate to limit in-person access, all 15 Trial Court Law Libraries, including Barnstable, will remain closed to the public at least until January 29, 2021. Although a decision has not yet been made, it is possible that this closure will continue through the end of March.

We realize that this may cause problems for you in your practice. Please know that our doors being closed does not mean you have no library access. We are committed to helping you with your legal research needs. In fact, while we were closed during the month of December, we still managed to answer over 200 reference questions.

If you wish to return or borrow library materials, please call us at 508-362-8539 to set up a convenient time to do so. At the risk of sounding like a broken record, if you need legal reference assistance, please call us at 508-362-8539 or email to barnstablelawlibrary@gmail.com. Both Suzanne and Mitzi are standing by to assist you. Your questions are far more interesting than our day-to-day library chores, so please ask away!

Our sincerest apologies for the inconvenience.
Stay safe!

Suzanne & Mitzi



TALK_{TO THE}HILL

FOR CIVIL LEGAL AID

JOIN US AT **EJCTalktotheHill.org**

SAVE THE DATE

JANUARY 27, 2021

11:00 AM



 @EqualJusticeMA

#IWalkforJustice

In adapting to the COVID-19 Pandemic, the Equal Justice Coalition (EJC) has converted its annual Walk to the Hill into “Talk to the Hill”. A compact web broadcast and subsequent breakout room session will provide a renewed call for State financial support of civil legal aid in Massachusetts.

The Equal Justice Coalition advocates for expanded access to civil legal aid for low-income Massachusetts residents. The Coalition includes bar associations, law firms and schools, legal aid organizations, and social service agencies working together to protect and increase the state appropriation for civil legal aid (budget line item 0321-1600, MA Legal Assistance Corporation).

Funding Civil Legal Aid \$35 million for FY22

Line Item 0321-1600
FY21 Appropriation: \$29 million

Civil legal aid is an essential service

Civil legal aid is a vital part of the Commonwealth's response to the COVID crisis, helping resolve issues related to housing, unemployment, debt, health care, domestic violence, and more.

Low-income people are disproportionately affected by the pandemic, the faltering economy, skyrocketing unemployment, housing insecurity, and other threats to their health, safety, and stability that often require legal assistance to resolve.

More funding needed to address crisis

Even before the crisis, **insufficient funding** forced legal aid organizations in Massachusetts to turn away the majority of eligible people who sought help. People with an income at or below 125% of the federal poverty line - \$32,750/year for a family of four - are eligible.

Legal aid saw a surge in need in the fourth quarter of FY20 after the pandemic hit, including:

- nearly **1,800 newly unemployed workers** who need assistance securing unemployment benefits, a 290% increase over the previous fiscal year
- nearly **1,200 additional housing cases**, despite the eviction moratorium
- **400% jump in minor guardianship cases**, and a 30% increase in custody and visitation case
- **36% increase in consumer and finance cases**
- **20% spike** in immigration cases
- a desperate need for help with restraining orders and family law issues for survivors of domestic violence

Legal aid last year:

95,000
people benefitted

\$115 million
in economic benefits
to the Commonwealth
and residents,
including

\$5.2 million
in federal benefits
entering the
Commonwealth

96%
of Massachusetts
towns had at least
one resident who
received legal aid



JOIN
the
Equal Justice
Coalition
for its annual
Talk to the Hill, 2021
this Wednesday,
January 27, 2021 @ 11 AM

www.ejctalktothehill.org

mlac.org | @CivilLegalAid | #LegalAidChangesLives

Updated December 2020

Participants include:

Attorney General Maura Healey

Supreme Judicial Court Chief Justice Kimberly Budd

Denise I. Murphy, Esq., President
Massachusetts Bar Association

Martin F. Murphy, Esq., President
Boston Bar Association

Michael Curry, Esq., President & CEO
MA League of Community Health Centers

Lynne M. Parker, Esq., Executive Director
Massachusetts Legal Assistance Corp.

Jacquelynne J. Bowman, Esq., Executive Director
Greater Boston Legal Services

Louis Tompros, Esq., Equal Justice Coalition Chair

To learn more about Talk to the Hill, please contact
Laura Booth of the Equal Justice Coalition at
lbooth@equaljusticecoalition.org.

"My children's lives are completely changed because of the help we received from legal aid."

- Kenda, who secured stable housing and protection from an abusive spouse with help from civil legal aid

"I want other people to be able to get the help that I did."

- Fred, Quincy resident who saved his home from foreclosure with help from civil legal aid

MLAC provides the crucial infrastructure that connects the legal aid network serving every corner of the state

MLAC is the largest funding source for civil legal aid in the Commonwealth. It distributes funding to 6 regional and 10 statewide legal aid organizations across Massachusetts.

In addition to funding, MLAC provides support with information technology; data and research; hiring and recruitment; diversity, equity and inclusion; and communications. MLAC also partners with legal aid organizations, bar associations, and the Access to Justice Commission to activate a network of pro bono lawyers and publish legal self-help materials.

Delivering on the promise of equal justice for all

Civil legal aid organizations provide advice and representation at no cost to low-income people who need help with serious legal issues. Without legal aid, residents must navigate a complex court system alone—with potentially dire consequences to their health and well-being.

Everyone deserves a fair process during civil proceedings, regardless of income.
Legal aid helps Massachusetts deliver on the promise of equal justice for all.

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617-367-8544

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mlac.org | @CivilLegalAid | #LegalAidChangesLives

Updated December 2020

Judge Rufo retires: humor, mentorship, and dedication to the law

By Sara Kohls, Esq. and Irie Mullin, Esq.

This fall saw the retirement of Judge Robert C. Rufo after almost 24 years on the bench, and 16 years sitting in Barnstable Superior Court. Judge Rufo is well known in the local bar, as well as the wider community, for his approachability, his unrelenting work ethic, and his knack for making personal connections within the formality of the court environment. His jokes and upbeat attitude will be missed by all, even as we are glad that his retirement will afford him more time with his family and to pursue his favorite hobbies: striped bass fishing out of Sesuit Harbor, cultivating a near commercial-sized home-grown blueberry crop, and fixing anything mechanical or technological, including his vintage pickup truck.

For members of the public, they often remembered Judge Rufo for his classic welcoming speech to jury venires, which set out the history of the right to trial by jury, and reliably broke the ice by telling jurors they could blame Mercy Otis Warren for their summonses. For those that ended up sitting on a jury in his courtroom, Judge Rufo worked diligently to personalize the otherwise duty-bound experience: asking about their families during individual voir dire, talking sports news during trial breaks, and making jokes at his own expense regarding his white hair and the “very long time” he’d been on the bench. At trial’s end, he would personally thank each juror, with most jurors agreeing that the often-dreaded experience had been positive, bringing them, as Judge Rufo would say, from “separate individuals who came into this building at the start, into a cohesive group that came together to speak with one voice and do justice.”

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Attorneys Sara Kohls and Irie Mullin presented Judge Rufo with a print of the Barnstable Village on behalf of the BCBA. The BCBA hopes that we can get together and celebrate Judge Rufo’s retirement in the future.

BARNSTABLE COUNTY BAR ASSOCIATION LAWYER REFERRAL SERVICE



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.



Congratulations to Anastasia Welsh Perrino, Esq. who was recently sworn in for another term as Register of the Barnstable County Probate and Family Court. The County Clerk of Courts, Scott Nickerson, is pictured here as she takes the oath. The residents of Barnstable County, the Court's staff, and the legal community are thankful for her remarkable leadership.

Register Anastasia Welsh Perrino, Esq. dedicates herself to making the Register's Office user-friendly and service-oriented and we thank her for her contributions.

Congratulations

to Attorney Lisa MacKenzie, who was sworn in as Judicial Case Manager on January 4, 2021. Lisa had been the "acting" JCM when Attorney Mike Stevens retired.

First Justice Arthur Ryley, The Barnstable County Probate Court and Family Court, and the BCBA are pleased to welcome her to this role and celebrate her accomplishment!



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

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a variety of
social events &
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For his coworkers, there are also fond memories of his personal connection, worth ethic, and humor. Judge Rufo was widely known among courthouse staff as the first to arrive, the last to leave, the most likely to work in the building on a Saturday, and guaranteed to use at least some of his yearly vacation time to work on difficult cases without interruption. Retired Judge Gary A. Nickerson had a standing brown bag lunch with Judge Rufo across his desk in the main session lobby every day for many years, and thoroughly enjoyed Judge Rufo's routine of bringing a daily allotment of his favorite frozen Thin Mint Girl Scout cookies, half of which were generously shared with the sweet-loving regional administrative justice. Judge Nickerson recalled how hard Judge Rufo always worked and how giving he was of his time, volunteering for many judicial committees in addition to his regular duties. Assistant Clerk Christine Higginbotham warmly remembers Judge Rufo's on-bench jokes with herself and other clerks, which helped show their human side to ju-

ries, attorneys, and litigants alike. She also recalls how Judge Rufo extended both his time and mechanical expertise to a tribunal participant who arrived late due to car trouble, by correctly diagnosing the problem as overfilling of engine oil and insuring the driver safely made it to a local repair shop for the appropriate fix. Many judicial staff attorneys, law clerks, and interns also benefitted from Judge Rufo's attention and approachability over his career. Knowing his position and black robe was intimidating to many on their first day of work, he made sure that these new lawyers and law students felt they could come to him with questions

Don't want to miss a BCBA update?

Visit our webpage at
www.barnstablebar.org

& add the
Barnstable County
Bar Association
on Facebook
to receive the latest info!

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business transactions

We are pleased to announce that

Eileen R. Sprague, Esq.

joined our practice in April 2020 and will continue to represent
individuals with estate planning, estate administration
and related real estate matters

and

Mari G. Chamberlain, Esq.

joined our office in February 2019 as of counsel to the firm
and will continue her concentration in conveyancing and real
estate transactions

William K. Mackey (1935-2019)
Kathryn Wilson
Eileen R. Sprague
Mari G. Chamberlain, of Counsel

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December 2020

and for advice. One of his favorite ice-breaking tactics was to call law clerks and interns on their office phones, and answer with a laughably transparent voice-impression of Judge Nickerson. Judge Rufo steadfastly maintains that this has successfully tricked at least one person, and in congratulations for twenty-four successful years on the bench, rather than state that such claim remains wholly unsubstantiated at the time of this writing, the two authors will admit that Judge Rufo did trick one of them, but will not admit to which one. The unwavering kindness and generous support that Judge Rufo showed his former law clerks and interns continued as they went forward with their careers. Always quick to write a recommendation letter, discuss the pros and cons of a potential job offer, or offer moral support, Judge Rufo made mentoring a priority despite his workload. Both authors benefitted from Judge Rufo's investment in their personal development and professional careers and are sincerely and forever thankful to him.

We, the Barnstable County Bar Association, never thought that the day would come that the dynamic judicial duo of Judge Nickerson and Judge Rufo would both actually retire. Most of us were surprised to hear that not only had Judge Rufo retired, but he retired early, as many of us thought that Judge Rufo would simply just refuse to leave the bench. But, alas, the inevitable day arrived and passed. The Bar Association is forever thankful for Judge Rufo's years of service and will use his kindness as an example as we welcome new judges to the Superior Courthouse.

Judge Rufo, from each and every member of the Barnstable County Bar Association, we are grateful for your service and look forward to seeing you as soon as it is safely allowed. Thank you.

Court Report: The Barnstable County Superior Court

Greetings:

I want to thank the bar association for giving me this opportunity to address them with what is going on in Superior Court. We have two conference rooms on the second floor that can be used by attorneys to have private conversations with their clients or to use to talk with other counsel about resolving a case. The rooms can also be booked for depositions if necessary by contacting me at 508-375-6684 and when you get to the opening message, press 6. They are located in the old third session Judge's lobby and the former jury check-in office on the second floor.

There is a lounge to be used by **attorneys and court staff only** to wait during court recesses, lunch recesses and during jury deliberations. The lounge contains two restrooms and is located in the old victim witness room by the elevator on the second floor. **This room is not to be used for meetings with your clients as we have conference rooms for that purpose.**

All Civil Pre-Trial conferences, Trial Assignment conferences and motion hearings are now being held via zoom meetings. If you have not received the call-in information for your hearing, please let us know and we will make sure you have the call in information. I ask everyone's patience as we have experienced some technology issues. Also, please be patient as we are doing our best to be on time but hearings or conferences sometimes go longer than expected. **When you came to the court in person, you had to wait at times, well the same is true for zoom meetings.**

On criminal matters, **the list is being called at 9am and attorneys call in via poly-com or teleconference. All custody matters involving the Barnstable House of Correction are called at 10 am. Motions on criminal cases**

will not be scheduled until the motion is actually filed in the clerk's office. We will be staggering the times that motion hearings will be heard to comply with in person limitations due to Covid-19.

At present, we are only doing jury-waived or non-jury trials on civil cases and bench trials on criminal cases. On civil cases, we are offering judicial mediation and a three judge panel, if parties wish to try to get their case heard earlier. Please contact me if both sides are interested in this procedure.

I would like the bar to know that at present, the clerk's office is at a reduced staff due to recent SJC orders and administrative directives. I expect that this will continue for several months. Please be patient as we are doing our best to keep up with all the work with only 50% staffing.

I would like to remind the bar that the e-filing pilot in the Superior Court has been up and running for almost two years in Barnstable Superior Court. We are accepting all types of civil cases and filings. 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.

I would like to remind the bar that



Photo credit: John Phelan, https://commons.wikimedia.org/wiki/File:Barnstable_County_Courthouse,_Barnstable_MA.jpg#file.

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.**

Also, since we are now scanning all documents, **I am asking the bars help and 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. I appreciate your help in this regard and since all courts will be scanning more documents, you should just stop stapling and use paperclips.

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.**

I wish everyone a Happy and Healthy 2021!

Scott W. Nickerson,
Clerk of Courts
Barnstable County

Trial in the time of COVID

By Mark D. Carchidi, Esq.

BACKGROUND

The Barnstable Superior Court has been the location for many historic trials, but many attorneys may not be aware of the recent history made there in November of 2020. This may be a sign of how civil matters may be litigated in the future after the effects of COVID-19 upon the judicial system have concluded.

A civil matter was commenced by Complaint dated October 6, 2017 seeking multiple counts including Declaratory Judgment as a form of relief. Possibly foreshadowing things to come, the controversy took a circuitous route. Initiated in the Barnstable Probate Court even prior to that date, it was transferred to the Superior Court as a result of a request from the Probate Court for an inter-departmental transfer. Thus, the nature of the dispute was not the typical type of case that would come before the Superior Court except for the equitable relief sought.

In essence, the action was a dispute between parties related by marriage over a piece of residential real estate and who would own that real property going forward and what respective responsibilities for the financial expenses of the property would be past, present and future. To do that the court was being asked to review and consider among other documents, title history, an estate plan and multiple amendments to the same. Both the Plaintiff and the Defendants requested a jury trial.

With COVID-19 and the suspension of in-person hearings and trials, the court continued in earnest to move the trial docket and bring cases to resolution. The matter was scheduled for a Pre-Trial Conference in August, 2020. After exploring the potential of settlement with counsel for the parties and realizing that would not be able to happen, Judge Mark C. Gildea proposed three alternatives (short of mediation or proceeding jury-waived)

to counsel for the parties.

First, was scheduling it for a 6-person jury to be scheduled for sometime after the first of 2021. Second, was waiting until who knew when for a 12-person jury and being put on a list to be assigned later. Third, was a jury of 3 Superior Court justices to hear evidence and decide the case. Counsel for both parties ultimately decided on that and the case was tried before Judge Gildea, Judge Beverly J. Cannone, and Judge Kathe M. Tuttmann and a verdict reached. In the nature of a point/counter-point discussion, this is a look at various considerations of both counsel for the parties and the court itself on that process and the trial, of course while protecting client confidences and the jury process.

PLAINTIFF'S VIEW

The initial consideration was, given the facts of the case, the theories of the causes of actions plead and the equitable relief sought under some of the theories of recovery, was it in the Plaintiff's best interest to try the case to 3 judges rather than 12 laypersons. The Defendants had raised a Counterclaim seeking money damages and so, the same factors needed to be considered and weighed in that decision.

If the answer was in the affirmative to both views of the pleadings, the next consideration had to be would the verdict of the 3 judges be unanimous or "majority of three". When I asked that at the Pre-Trial Conference, Judge Gildea needed some time to research that question and report back to counsel before either counsel was required to commit to that alternative method. He replied that it would be by majority decision of the 3 jurists hearing the evidence. Furthermore, in order for this hybrid to proceed, both counsel would have to be in agreement with going forward in that manner.

Pursuant to G.L. ch. 234A sec. 68B, the verdict of a civil jury must be by 5/6ths of jurors who heard the evidence. "In any civil action the jury shall be instructed that the agreement of 5/6 of its members shall be sufficient to render any special or general

verdict." Mass. Gen. Laws Ch. 234A Sec. 68B Number of jurors required to render verdict; instructions on sufficient numbers (The General Laws of Massachusetts 2019 Edition). Thus, "percentage-wise", agreeing to this manner of proceeding would "change the odds" depending on how strongly each side viewed their position on the counts of the Complaint and Counterclaim.

The next consideration was whether advancing this matter to conclusion would benefit my client rather than allowing the continued conflict to go on until who knew when.

Both counsel having agreed to proceed this way, next were some unique hurdles in trial preparation and presentation. As is customary and required by the traditional Trial Assignment and Order, all exhibits (contested and stipulated to) had to be pre-marked along with an Agreed Statement of Facts. The last were established as part of the Pre-Trial Conference. However, instead of only one book of Stipulated Exhibits and one book of Contested Exhibits, recognizing that the 3 judges would be hearing the same testimony and viewing the same documents at the same time and, COVID, not necessarily wanting to pass the books between each other and recognizing how cumbersome that might be, I decided that 3 sets of each book (one for each judge) would be necessary. No small task since there were about 350 pages in the total of both books.

One beneficial aspect was that the court agreed that proposed Jury Instructions were not necessary. But that did leave the aspect of how any special issues of law would be presented to the court. A Motion in Limine prior to the commencement of the trial did not seem to be the appropriate avenue so that is something that should be considered and provisions made for in the future for this type of trial. The court did want Jury Verdict Questions presented. Each counsel prepared their own and submitted them to the court. The court then requested that one set of agreed Jury Verdict Questions be filed. That presented quite a challenge.

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Continued from page 10

The art of drafting them was somewhat lost since both counsel had to take into consideration the order of presentation of those questions and the sheer number of the questions that the judges were asked to consider and answer. From my perspective, this is an area that could be significantly improved upon allowing each counsel to submit their own, separately. Each counsel could be allowed to guide or direct more carefully the theory and position they are advancing to the finders of fact.

Again, due to COVID realities, the limitations on the ability of live testimony from out-of-state witnesses required that either witnesses or parties from out of state (which included multiple in this case) needed to either arrive early enough in advance of trial to quarantine for the recommended/required time period before the trial, successfully pass the necessary COVID test and have proof of the same, or, testify remotely. The significance of the live, in-person testimony of that party/witness had to be considered. In this case, one out of state party did come into the state in sufficient time to quarantine in advance of trial and another witness testified by ZOOM video conference. That decision was made NOT because her testimony was deemed to be unimportant, but because of age, travel restrictions, expense, health concerns, employment conflicts and responsibilities and other issues, she did not wish to travel to testify. So, permission from the court had to be secured (here with the assent of opposing counsel) for that testimony by ZOOM

conference and arrangements had to be made with both the court and technology-wise for that to happen.

Finally, and the most difficult it seemed to me, was the closing argument. Ordinarily in a multi-day trial before lay jurors having some focused legal issues and significantly disputed facts, counsel could reasonably count on the fact that some of the legal issues/theories and important facts might have been "lost" on one or more of the jurors. The goal of the closing argument would be to remind the jurors of the important theories advanced and the facts they are asked to focus on when reaching their verdict. Certainly, with that, there is some repetition of the events of the prior days and the presiding judge as "gate-keeper" is not influenced by the closing argument made.

Here, it was quite the opposite. The 3 judges listened intently for multiple days to the facts presented, the legal theories advanced, and assessed the credibility of the witnesses. Thus, the challenge of the closing was to walk the fine line of having a final effort to convince the "jury" of the important facts and theories of law advanced and how the necessary elements of the causes of action in the Complaint and Counterclaim were or were not met without boring the judges by repetition. Some may believe that to be no different than in a bench trial. I suggest that is very different where you have multiple judges who are hearing the case from the perspective and in the capacity of a juror and will have input, but not singular control of, the ultimate verdict.

Overall, and simply focusing on the circumstances of this case, I

would report it was a positive experience for counsel, the parties and I believe the judges and court process. What could have easily have been a 5-day trial, was consolidated into 3 days in large part with doing away with the selection of the jurors. The deliberations by the judges was most likely faster and more to the point than a lay jury. The verdict and judgment on the claims and Counterclaim most likely gave greater weight to the equitable considerations than a jury of laypersons would have. A large measure of credit for the positive experience goes to Judge Gildea who presided and was one of the 3 "jurors" and the other judges who acted as jurors and took the initiative to exercise some creative thinking and courage to try a different process of justice in an effort to relieve the COVID-inspired backlog that exists and continues to plague the court now. My opinion is that the Supreme Judicial Court has the statutory authority under G.L. ch. 213, sec. 3 to make this a permanent alternative as that statute provides:

"Eighth, Expediting the decision of causes and securing the speedy trial thereof." Mass. Gen. Laws Ch. 213 Sec. 3 Rules; power to make and promulgate).

With some fine-tuning, this appears to be the way of the future and to me, a reasonable accommodation that is a creative solution while still ensuring that justice is done for the litigants.

Mark D. Carchidi, Esq.
LAW OFFICE OF
MARK D. CARCHIDI, P.C.

THE BCBA SEEKS TO AWARD A SCHOLARSHIP!

The BCBA scholarship program has been revived by a kind donation from a former recipient and BCBA member. The BCBA plans to grant at least one scholarship in the late Spring of 2021.

Criteria to include: *current enrollment in or acceptance to law school and resides in or has a connection to Barnstable County.*

If you wish to make a donation and contribute to this scholarship program, please contact bcba@verizon.net. More details regarding applications and deadlines will be announced.



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FAMILY LAW

**ATTORNEY NICOLE F. BARRASSO
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WITH MICHAEL I. FLORES, P.C.**

FOR IMMEDIATE RELEASE

**Contact: Sarah Smith,
Michael I. Flores, P.C.**

(508) 240-1115 | sarah@miflorespc.com
12 Main Street | Orleans, MA 02653
128 Route 6A | Sandwich, MA 02563

SANDWICH, MA AND ORLEANS, MA

Michael I. Flores, P.C. is pleased to announce that Attorney Nicole F. Barrasso, Esq. has joined their successful and growing law practice.

Nicole concentrates her practice in the area of family law, including divorce, alimony, asset division, child custody, child support and other family law issues. She handles all facets of domestic relations litigation, such as motion hearings, contempt hearings and trials.

Nicole graduated magna cum laude from Boston College Law School where she was a coordinator of the Holocaust/Human Rights Project and a recipient of the Best Orator Award in the national John J. Gibbons Moot Court Competition. She was admitted to the Massachusetts Bar in 1998 and the U.S. District Court, District of Massachusetts, in 2000. Following law school, she clerked for the justices of the Massachusetts Superior Court and then she clerked for the Honorable Benjamin Kaplan and other justices of the Massachusetts Appeals Court. Following her clerkships, she practiced commercial litigation at a large international law firm in Boston. Nicole has been a member of the Cape and Islands community since 2004 when she moved to the Cape with her family.

Nicole obtained her undergraduate degree, summa cum laude, from the University of Maryland where she was on the Dean's List, a member of the Alpha Lambda Delta Honor Society, and Phi Beta Kappa Honor Society. She was also awarded the Phi Beta Kappa Senior Award.

She is a member of the Barnstable County Bar Association. Dana Farber Cancer Institute is close to her heart and she volunteers at the Pan-Mass Challenge every August.

Nicole is now scheduling consultations with new and existing clientele from the Upper Cape, Martha's Vineyard, Nantucket and Plymouth County at Michael I. Flores, P.C.'s new Sandwich location (In historic Downtown Sandwich, 128 Route 6A).

Founded in 2010, Michael I. Flores, P.C. is a team of professionals who provide legal representation to individuals involved in divorce and family law disputes throughout the Massachusetts counties of Barnstable, Dukes, Nantucket, Plymouth, Bristol, Norfolk, Middlesex, and Worcester. They have offices both in Orleans and Sandwich.

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DID YOU KNOW???

The Barnstable Probate and Family Court prefers that all practitioners do the following:

- ♦ Provide a blank space on the front of all Motions. This is to allow for a stamp for said Motion to be allowed or denied;
- ♦ Double space for all court submissions; and
- ♦ **All submissions** to the court must be sent 36 hours prior to a hearing. Submissions after this deadline will likely not be seen by the Judge.
- ♦ Finally, please advise all of your clients to be in an appropriate space and wearing suitable attire (pants included) for all Zoom hearings.

**WATCH FOR MORE TIPS AND A CHANCE TO PARTICIPATE IN AN EXCLUSIVE ROUND TABLE
DISCUSSION WITH THE PROBATE & FAMILY COURT.**

DETAILS TO FOLLOW VIA EMAIL FROM THE BCBA! (See Page 1 Pres. Message)

Transcription orders of court recordings

By Linda Kelly

I hope this article finds the readers of this newsletter healthy and anticipating a happy year.

The information below is based on questions I have received from attorneys either during depositions or in the process of producing court-recording transcription jobs. Please keep in mind that Office of Transcription Services (OTS) policies change frequently; the information is current as of the writing of this article.

As of now, attorneys can place a Transcript Order Form (TOF) and designate their preferred Approved Court Transcriber (ACT). This option is not listed on the OTS website or TOF but it is an option. Keep in mind that it is indicated that court-recording transcribers **MUST** be from the OTS ACT List. OTS has indicated there is a risk that the transcript may be rejected or objected to at a later point if not produced by an ACT List member.

If you have a preferred transcriber from the ACT List, please check with them as to their current ability to accept an assignment. If they can accept an assignment, insert the contact information from the OTS ACT List on the TOF, or the transcriber may have a customized OTS TOF. If you do not have a preferred transcriber, the assignments are supposed to be assigned to ACT List members on a fair and rotational basis. Some of the firms on the list have subcontractor transcribers that are not identified on the list, although each subcontractor transcriber is also supposed to be vetted by OTS as to qualifications and background.

Please note that there is a wide range of certifications, qualifications, education, and experience of transcribers on the ACT list, and some qualifications that are deemed important in the Mass. legal field were not accepted as a qualifying credential. For example, the

Mass. Certified Shorthand Reporter (CSR) (testing writing over 200 wpm and timed transcript production with 95% accuracy) was rejected by OTS as an accepted credential for members applying for inclusion on the list, as well as all states' CSRs, but the Certified Electronic Recorder certificate was accepted as a credential, which has no testing requirements as to typing speed nor transcript production. Court reporters with multiple national testing qualifications and years of experience were not accepted on the list. OTS does not provide reasons for rejection and does not provide an appeal process.

So, bottom line, if specific transcriber qualifications are important to you, due diligence may be an option.

OTS: DOWNLOADS for the Transcript Order Form/TOF and Approved Court Transcriber/ACT List:

Link: [Order a court proceeding transcript | Mass.gov](#)

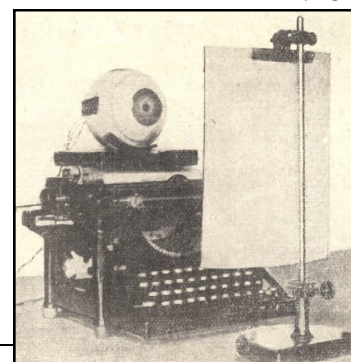
Be aware that the TOF does need the docket info, the hearing date, and the specific start/stop times that are being ordered. Sometimes the start/stop times are available by OTS or court staff, sometimes they are not. Taking good notes of start/stop times while at a hearing can be helpful in placing future orders. Transcribers only get paid for the pages produced and need to be provided a complete and accurate TOF. The CourtFM recordings may be of assistance in filling out start/stop times. If the CourtFM recording is accessed by you or your staff, there is also a button for ordering the transcript directly from that page, way down at the bottom of the page (have to move the slider down the side of the page, to the bottom, to see the button). Again, from that "Order Transcript" button, you can insert the name of a preferred ACT transcriber. (Note: Please pay attention to the CourtFM/FTR access limitations/warnings. They have changed over the last few years.)

Once an ACT transcriber is assigned an order, it is required that the transcriber contact the ordering party to confirm the order/assignment. If you place an order and do not receive that transcriber's email shortly thereafter, contact OTS to make sure the assignment was made.

A deposit will be required for private-pay orders. Be ready to submit that deposit. A delay in providing the deposit will result in a delay of the start of the transcription, and/or may result in a cancellation of the order. If qualifications are a concern, this point may provide an opportunity to conduct due diligence, to check the ACT List; or, if this is a subcontractor, check for OTS approval/vetting.

Transcribers only receive the docket and the TOF. Any additional information (spellings, case citations, etc.) that you can provide will assist in the production of a better transcript. The transcript rates were set in 1988 at \$3/pg for the original and \$1/pg per copy, expedite/rush orders are \$4.50/\$1.50. (It has been indicated that transcribers could charge different rates than those set in 1988 for private-pay orders, depending on the order circumstances.) Those 1988 rates were severely decreased in 2011 for CPCS-paid appeal transcripts (from \$5/pg for appeal Original + 2 copies to \$3.20). This has affected the transcribers who accept CPCS-paid work and/or how much of it can be accepted at any given time. For private-pay appeals, the ordering party must pay for copies to be delivered to the lower-court clerk and all attorneys to the appeal simultaneously pursuant to MRAP and Administrative

Continued on page 15



SOUTH COASTAL COUNTIES LEGAL SERVICES, INC.

JOB OPPORTUNITIES

Compensated and Pro Bono Case Opportunities for Private Bar

SCCLS Needs Your Help

Compensated Eviction Defense Cases

Due to the COVID-19 pandemic many residents of the Commonwealth are facing housing instability due to infection, job loss, and other factors. While legal aid organizations across the Commonwealth are working to increase staff capacity to aid these families in crisis, the need is greater than our staff can meet. With your help, we can alter the course of the so-called eviction tsunami through our COVID Eviction Legal Help Project.

South Coastal Counties Legal Services and volunteer attorneys will be working virtually with tenants to provide pro bono advice and assistance completing answer and discovery forms in their private eviction cases.

For those attorneys ready to dive into Summary Process cases, we will be referring cases for **compensated** full representation at the rate of \$50/hour.

Compensated Family Law Cases

While this pandemic has had a massive effect, it is not the only factor leading to evictions and other legal problems faced by our communities. SCCLS receives ongoing requests for aid in consumer, estate planning and many other types of issues, especially family law. We have many cases available which are eligible for reduced fee **compensated** referral at the rate of \$50/hr under the Civil Legal Aid for Victims of Crime grant.

For more information on joining our pro bono and compensated attorney panels, please contact:

Victoria Gautney, PAI Coordinator

vgautney@sccls.org

(p) 508-742-1340

SOUTH COASTAL COUNTIES LEGAL SERVICES, INC. (SCCLS)

SEEKING TEMPORARY STAFF ATTORNEYS – COVID Eviction Legal Help Project

South Coastal Counties Legal Services, Inc. (SCCLS), a non-profit legal services program providing free civil legal assistance to eligible low-income and elder residents seeks to hire temporary Staff Attorneys with a range of experience for **up to 1 year to join the COVID Eviction Legal Help Project** funded to address housing matters resulting from the cessation of the statewide pandemic eviction moratorium. The project will focus on legal representation and housing stability support for the region's most vulnerable residents, many of whom are elderly, disabled, of limited English proficiency and who face numerous barriers to navigating the court process effectively, especially with virtual formats.

Duties Include: Attorneys and paralegals will work collaboratively across SCCLS and JCSM offices to provide high-volume eviction defense legal representation, community outreach and education and impact advocacy in sessions of the Metro South and Southeast Housing Courts. Due to Covid-19, it is expected that much of the project will be implemented remotely.

COMPENSATION AND BENEFITS: SCCLS offers competitive compensation based on comparable public interest salaries and commensurate with experience. Multi-lingual annual increment to base salary may be added for demonstrated language skills. Generous benefits and leave offered.

APPLY: Submit letter of interest and resume to: jmarcotte@sccls.org with Subject Line: COVID Staff Attorney

Continued from page 13

Order 19-1. The transcriber should be provided the email addresses of the court clerk to receive the transcript delivery and all attorneys/parties involved in the appeal.

Transcription and proofreading can take anywhere from about three times the length of the recording to multiples of that, depending on the quality of the recording, the amount of microphone playback manipulation that is required, the skills of the transcriber, etc.

CourtFM recordings and FTR recordings are not identical. CourtFM recordings are “flat” – they are mono recordings; isolating microphone playback is not an option. Recordings that are delivered by CD are usually CourtFM recordings (flat/mono). If ordering a CD, an FTR recording copy may need to be specifically requested. FTR recordings do allow for microphone isolation. Be aware, however, that sidebar microphones are mono. When the white noise goes on, all other microphones in the courtroom are shut off automatically. If there is noise in the courtroom and it is picked up on the sidebar microphone, the dialogue at the sidebar mic is obliterated. Or, if something is happening elsewhere in the courtroom, the sidebar microphone may not be picking it up. Open-court proceedings should not resume until the white noise is off.

Please make sure your microphone is angled correctly when in court. When walking between zones, please be aware the recording may be affected. Keep papers and other noises (clicking pens, coughing, stapling, keyboarding, etc.) away from the microphones. Recordings may be running during breaks. When speaking confidentially to clients, please remember to push the button to turn off the mic.

It is hard sometimes for transcribers to know confidently what is audible to the room and should go in the transcript versus what are private conversations.

When remote/pandemic hearings are recorded, the call-in parties/speakers are all on one speaker/microphone. The FTR microphone indicators are not helpful for speaker ID, so it is helpful to identify yourself each time you speak, especially if voices are similar. It is tedious but may be worth the effort for a more accurate transcript. If masks are worn, please slow down and enunciate as much as possible.

In-person: There is a delay between the microphone input and what a court-recording monitor is hearing, if there is a person/court monitor available. The court monitors are not court reporters and do not/are not authorized to produce transcripts unless they are on the ACT List.

If looking for a former Official Court Reporter (OCR), the contact information on the court website is outdated. Some former OCRs are now court monitors. To order the transcript from a former OCR, direct contact is the process. OCRs were fully eliminated on 7/1/18; some OCRs became court monitors on 1/1/18, and there were some court monitors hired before that for Boston courts. Please check the docket or case file first to see if there is note of whether a hearing was taken by FTR or if the OCR's identity is noted.

LAWYERS WITH DOGS



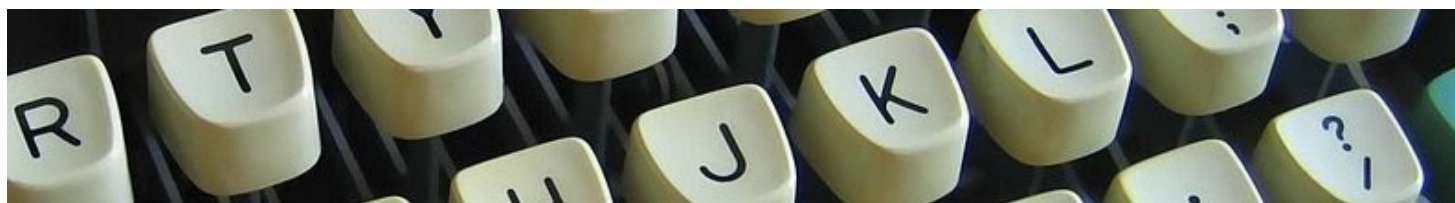
Attorney Brian Blakeslee's Otto catches a Cape Cod sunset on the sands of Crosby Landing in Brewster.

*BCBA does not exclude other pets such as cats, horses, or pigs, etc. To submit your photo, contact nouvellette@publiccounsel.net.

I think that covers most of the questions that I have received from attorneys over the last several years regarding ordering transcripts from court recordings. If you have any additional questions, please contact me.

Thank you and have a healthy 2021 –

Linda L. Kelly, CSR/RPR/CM/ACT
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A fast-paced, general practice law firm on Cape Cod, currently with five attorneys and growing quickly. The firm is relaxed, but extremely professional, ethical and hard-working. The candidate is expected to manage their caseload, provide support to other attorneys, and network in order to generate business. The candidate must have strong organizational skills as well as exceptional communication skills. Experience with criminal law or civil litigation preferred, not required. The position is full time. Salary is based on experience and skills. Benefits: health and dental insurance, professional development assistance, and retirement.

ATTORNEY MICHAELA MCCUISH / michaelamccuish@capeattorneys.com
<https://capeattorneys.com/>



**J
O
B
S**

Boudreau and Boudreau, LLP Seeking a Legal Assistant

The Law Offices of Boudreau and Boudreau, LLP in Hyannis seeks a legal assistant with at least two year's experience in real estate law and general law. The ideal candidate is resourceful, well-organized and flexible team player who pays attention to detail, enjoys working with numbers and is experienced in Microsoft Word and Outlook and has the ability to prioritize and multi-task in a time sensitive environment. The office offers a professional but friendly environment and is very client-oriented. Salary is commensurate with experience. Please send cover letter, resume and compensation requirements.

mark@boudreaulaw.net

Mark H. Boudreau, Esq.

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Position available in Hyannis, Martindale Rated AV Business/Litigation firm for experienced legal assistant/paralegal. Candidate must have experience in areas of business litigation, personal injury and probate litigation, and be accustomed to working in a fast-paced environment. Very attractive compensation available, commensurate with experience.

Email resumes in confidence to nancy@bierlaw.com.

Attorney Bruce A. Bierhans

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**THE LAW OFFICES OF
STUART W. RAPP
SEEKS A LEGAL ASSISTANT**

Mid-Cape law office is seeking to fill a full-time legal assistant position.

Applicants should be experienced in the Massachusetts Probate Process, Estate Planning, Guardianships and Conservatorships. Applicants should be detail-oriented, capable of multi-tasking, organized, possess strong verbal and written communication skills, and be proficient in Microsoft Word, Outlook and Excel. If you are a professional with a strong sense of discretion and have a minimum of two years of experience working in an attorney's office, please forward your resume to the Law Offices of Stuart W. Rapp at:

749 Main Street, Osterville, MA 02655
or [email: srapp@srapplaw.com](mailto:srapp@srapplaw.com).

JOBS



**LaTanzi, Spaulding & Landreth, LLP
Seeks Attorney and Paralegals**

REAL ESTATE ATTORNEY

Lower Cape Cod law firm seeks a real estate attorney to join its established practice. Ideal candidate will have demonstrated case/client management skills, an ability to work in a fast-paced environment and a desire to grow and excel in a collegial and supportive setting. Three to five years of real estate experience required; salary dependent upon experience. We offer competitive benefits and compensation.

REAL ESTATE PARALEGAL

If you are looking for a fast paced and challenging position, a busy lower Cape Cod law firm has an opening in the real estate department for an experienced full time paralegal. We seek a team player who can also work independently with a commitment to service to the client, confidentiality and professionalism. Strong clerical, organizational and prioritization skills will be needed as you progress through diverse real estate matters. Previous law firm experience is required. We offer competitive benefits and compensation.

ESTATE PLANNING PARALEGAL

Well-established lower Cape law firm seeks a full or part time probate and estate planning paralegal. The ideal candidate will have excellent word processing, document preparation, organizational and communication skills. Candidate must be able to work independently and as part of a team in a fast paced environment. Previous law firm or related experience is required. We offer competitive benefits and compensation.

Qualified applicants for these positions should submit resumes to:

**Office Administrator
LaTanzi, Spaulding & Landreth, LLP
PO Box 2300
Orleans, MA 02653**

Have something to share with the members of the BCBA?
Send in law reviews, opinion sections, volunteer opportunities, & events.
Want to place an ad for your financial, transcription, or other services?
Have a new associate joining the firm or looking for one?
We reach over 300 members quarterly.

Prices for placements are as follows:

1/8 page: \$75

1/4 page: \$125

1/2 page: \$200

Full page: \$300

Contact Nicole Ouellette at nouvellette@publiccounsel.net or bcba@verizon.net.

BARNSTABLE COUNTY BAR ASSOCIATION

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

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Bar Advocate and Legal Aid Attorneys: \$25

Retired or over 70 years of age: \$0