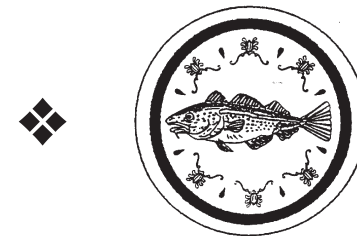




BARNSTABLE COUNTY BAR ASSOCIATION
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BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

FALL 2007

PRESIDENT'S MESSAGE

Dear Members of the Barnstable County Bar Association:

I am pleased to serve as your President this year. My primary goals this year are to promote the camaraderie among members of this Bar Association by sponsoring social events for all members to attend, to provide educational seminars to educate our members, and to work on improving access to justice in our courts for those who may not be able to afford legal counsel.

Our first social event of the season this year is the annual Fall Bench and Bar Dinner scheduled for October 25, 2007 at 6:00 P.M. The dinner will be at the Ridge Club in Sandwich. Carrie Woods has organized this event. Our guest speaker will be the Honorable Phillip Rapoza, Chief Justice of the Appeals Court. He will speak about recent decisions of interest from the Appeals Court.

In January 2008, we plan to sponsor a reception for new attorneys, current bar association members, and the Judges. This is a way for both newer and more experienced members of the Bar to get together with the Judges in a social setting. This event was well attended by all last year.

In the Spring of 2008, the Bar Association will host a law day event in each of the District Court Departments in Falmouth, Barnstable and Orleans. Adrienne Okon is working diligently to make this event a success. It is important for the Bar Association to reach out to our community and invite young students to participate in this event by writing an essay or drawing a poster on a legal topic.

In the late spring, we are planning our third annual trip to a Red Sox game at Fenway Park. Mike Stevens has done a terrific job planning this event. Further details will follow when the date of the game is selected.

With respect to educating our members, both John Dale and Chuck Ardito are in the process of working on separate seminars for Superior and District Court practitioners. Mary Beth Holland is working on a seminar for Probate and Family Court practitioners.

With respect to access to justice, Richard McMahon of the New Center for Legal Advocacy has joined our Executive Committee this year. He is currently serving on a Committee in Boston that is exploring access to justice issues for the public in the court system. I expect he will bring some new ideas to the committee this year on how we can improve access to justice in the Courts here in Barnstable County.

Finally, I would like to thank all members of the committee this year for dedicating their time. I especially thank Madeleine Delorey for her continued assistance to our membership. I also want to extend a special thank you to Daniel Neelon for putting together this newsletter.

I look forward to working with you all this year. Please feel free to contact me this year should you have any questions or concerns.

-Anastasia Welsh Perrino, President, BCBA

CAPE ATTORNEY AMONG THOSE RECEIVING ST. THOMAS MORE AWARD AT THE FALL RIVER DIOCESAN RED MASS

FALL RIVER (adapted from a press release) — Judges, attorneys, and others working in the justice system were invited with family and friends to the annual Red Mass sponsored by the Fall River Diocese at 3 p.m. on Sunday, October 14, at St. Mary's Cathedral in Fall River. Bishop George W. Coleman was the principal celebrant of the Mass, and the homilist was Reverend J. Bryan Hehir, Secretary for Social Services and President of Catholic Charities in the Archdiocese of Boston and a faculty member at the Kennedy School of Government at Harvard University.

The Red Mass is hosted annually by the Fall River diocese to invoke God's guidance and strength on those who work in the legal system and to honor members of that community for dedicated service with the St. Thomas More Award. Recognized with the Award this year were: as Distinguished Jurist, the Honorable Robert A. Mulligan, Chief Justice for Administration and Management, Massachusetts Trial Court; as Distinguished Attorney, James H. Quirk Jr, Esq. of Barnstable County; and as Distinguished Ecumenical Recipient, Carl Cruz, Assistant

Chief Probation Officer, Bristol County Probate & Family Court. Quirk maintains his law practice in Hyannis and is a resident of Yarmouthport.

The award, which is unique to the Fall River Diocese Red Mass, is named for St. Thomas More, a 16th century lawyer and martyr who refused to compromise principle. Recipients are nominated by a committee comprised of a diocesan cross section of judges, attorneys, court personnel and priests. A centuries-old tradition in the Catholic Church, the Red Mass is widely celebrated in dioceses throughout the United States. It derived its name over the years from the color of the vestments customarily worn during the liturgy, which is formally the Mass of the Holy Spirit.

Editor's Note: Last year another Barnstable County attorney, Anastasia Perrino, Esq., currently President of the Barnstable County Bar Association and an Assistant Register of the Probate and Family Court Department, was a recipient of the St. Thomas More Award.

The next deadline to submit articles for the Barrister is November 30, 2007 for the Holidays 2007 edition. Please send materials as e-mail attachments to attorney Dan Neelon at dneelon@neelonwilder.com.

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

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MANY POSITIVES COME OUT OF SAD CAPE CASE

When the initial images of a black-and-blue Ann Gryboski appeared on television and in the newspapers, no one was thinking “murderer” — not with the facts that accompanied the photos.

Even Michael D. O’Keefe, the district attorney for the Cape and Islands, recognized from the start that there were “mitigating factors” in the case involving a respected internist.

Gryboski was a battered woman; a victim of physical as well as psychological abuse at the hands of Patrick Lancaster, her husband of 20 years. In fact, as reported by the Cape Cod Times and others, the facial injuries visible in the photos after her arrest were the apparent result of a beating delivered by Lancaster the night before his death. Lancaster was allegedly angry at Gryboski for not leaving a restaurant fast enough.

As alleged, Gryboski shot and killed her husband on Easter Sunday. But from the get-go, the cry from her legal team was “self-defense.”

Last month, a Barnstable grand jury agreed and issued a “no bill,” declining to indict her. That decision brought to an end what likely would have been a painful case that no one wanted to see. But it also represented the last act in a line of good decisions made by the Cape Cod community and its DA. O’Keefe could have allowed the case to go to trial, after which a Superior Court jury would have decided Gryboski’s fate. A man was shot and killed, and there seemed to be little question over the identity of the shooter.

O’Keefe also could have made the decision not to prosecute by himself, realizing that the battered doctor had a strong case for self-defense.

But he sent a stronger message by letting the grand jury — in theory, at least, the conscience of the community — make the decision on whether Gryboski’s actions were criminal.

Let’s be clear: O’Keefe did not have to do what he did. His job is to make the case that a crime was committed and show enough evidence to convince a grand jury that the accused should stand trial for his or her actions. True, a DA is obligated to present any known exculpatory evidence. But, in this case, O’Keefe went above and beyond his duties to paint a complete picture for the grand jury.

While grand juries are largely secretive, published reports indicate that the jury heard from 27 witnesses who testified that Gryboski was an abuse victim. It is said that grand juries do whatever a prosecutor wants them to do, and that the defense does not have much say, if any, when the evidence is initially presented. By allowing the grand jury to hear an amount of exculpatory evidence usually reserved for the jury in a full trial, O’Keefe was doing something rarely seen in prosecutorial circles.

Perhaps it should be done more often.

O’Keefe reportedly listened to members of his community when they expressed concern over holding a battered woman responsible for something she seemingly did to protect herself and her children. This is a rare, but laudable example of the community and one of its leaders having a fruitful conversation.

Perhaps this, too, should be a more common occurrence.

Prosecutors are often criticized for being overzealous with their discretion. But the Gryboski case is an example of a prosecutor who used his discretion wisely. O’Keefe and his community on the Cape got justice right in this case on a number of levels. **MLW**

Editor’s Note: This editorial originally appeared in the Sept. 3, 2007 issue of Massachusetts Lawyers Weekly. It is reprinted here with permission of Lawyers Weekly.

Encore Performance! The Honorable Joseph J. Reardon, First Justice Of the Barnstable District Court



*You Are Cordially Invited To His Retirement Brunch and
The Celebration of His 14 Years of Dedicated Service*

Sunday, November 11, 2007

at 11:00 AM

at the Sons of Italy

4966 Falmouth Road, Cotuit, MA

Italian buffet, DJ, No long speeches

All tickets must be purchased in advance, No tickets will be sold at the door

Cost will be \$40.00 per person

A maximum number of tickets will be available

SUPERIOR COURT NEWS

I thank the Bar Association for giving me the opportunity to address everyone. I hope everyone has had a nice summer and that you are settling into your fall routines. Things have been and still are very busy here in Superior Court. We have lost four civil sessions already this year, creating a backlog on scheduling dispositive motions and hearings on non-jury matters. I am asking all the members of the bar association, the executive board and officers and all attorneys that practice in Barnstable Superior Court to write to Chief Justice Barbara Rouse at Administrative Office of the Superior Court, Suffolk County Courthouse, 13th Floor, 3 Pemberton Square, Boston, MA 02108 to inform her how important it is that both our sessions are fully staffed 12 months of the year and of the serious need for a third session at least 3 months a year.

Judge Nickerson and I have worked very hard at attempting to secure the necessary judicial resources to meet the needs of the court, but any assistance from the bar would be greatly appreciated. It is for your benefit!! We had a third session for the first time last year for one month and it was very successful. We got it up to two months this year, before it was taken away when there was a shortage for 9 Superior Court judges statewide in September. The third session has been very helpful in bringing to resolution non-jury matters and helping with the motion session. I hope the bar will help. I will keep on fighting for more sessions and did put in a request for six months of a third session for 2008.

In other news, I am pleased to announce that the SJC approved my nomination of John S. Dale as First Assistant Clerk-Magistrate of Barnstable Superior Court for another three-year term. I hope you will join me in congratulating John. He has been a fine addition to this office. The Trial Court's MassCourts project to combine in one computer system all seven

trial court departments is proceeding, but the integration is going slower than expected with many complications. I do not see it being fully completed by the end of this year as originally planned. We are blessed to already have a statewide system in the Superior Court, and we hope the MassCourts project will be fully implemented by the beginning of 2009.

The Governor and Legislature have underfunded the courts for FY '08 by not including the judicial and clerk pay raises, which were approved in August of 2006, in the FY '08 budget. We are hoping that this will be corrected in a supplemental budget. In my first six years in office, the Governor and Legislature always looked at our budget in the month of April preceding the fiscal year. For some strange reason, this year they looked at our budget as of July (2006) before the approved pay raises took effect. I will keep you posted on this, as it may affect the ability of the clerk's office to respond to your needs and requests. I will continue to fight to make sure the citizens of Barnstable County have the same access to justice as the bigger counties in and near Boston.

As always, if any member of the bar has any questions, comments, suggestions, complaints or compliments, please free to contact me at 508-375-6684, or e-mail me at scott.nickerson@jud.state.ma.us It is a pleasure to serve as your County Clerk of Courts, and I look forward to working with you to make Barnstable Superior Court one of the best and most professional, user-friendly courts in Massachusetts.

*-Scott W. Nickerson, Esq.
Clerk of Courts, Barnstable County*

AMENDED SUPERIOR COURT RULE 9C TAKES EFFECT

All trial practitioners should note that the amendment to Superior Court Rule 9C approved by the Supreme Judicial Court became effective October 1, 2007. Amended Rule 9C reads as follows:

RULE 9C. SETTLEMENT OF DISCOVERY DISPUTES

(Applicable to all civil cases)

Counsel for each of the parties shall confer in advance of serving any motion under Mass. R. Civ. P. 26 or 37 and make a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to serve the motion shall be responsible for initiating the conference, which conference shall be by telephone or in person. All such motions shall contain a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties, or that the conference was not held despite reasonable efforts by the moving party to initiate the conference, setting forth the efforts made to speak by telephone or in person with opposing counsel. Motions unaccompanied by such certificate will be denied without prejudice to renew when accompanied by the required certificate.

News from the Registry of Probate

At a recent meeting of the Registers, we thanked Chief Justice Dunphy for his many years of service and congratulated the Honorable Paula M. Carey on her new appointment as Chief Justice of the Probate and Family Court Department. Chief Justice Carey is energetic in her strong commitment to the Probate and Family Court Department and the changes and developments the future brings-in particular, the MassCourts initiative, a case manage-

ment system designed to allow all components of the Trial Court to work effectively and efficiently with each other as well as with other individuals and organizations outside the Trial Court. MassCourts has already been implemented in several departments, and the Probate and Family Court is next! No dates have been set yet, and the current capabilities of MassCourts are being reviewed in detail for adaptation to the Probate and Family Court Department. Public access to certain case-related information on the web is a *long term goal*, but we can look forward to this ability with future developments.

Also, just a reminder that the Probate and Family Court Department has revised some of its forms. You can access these forms on the Trial Court web site, www.mass.gov/courts. You can narrow your search to the Probate and Family Court Self Help Center. I have also been provided with the following shortcut for direct access to the new forms page: <http://trialcourtweb.jud.state.ma.us/pfforms>. While we are still accepting the old forms for filing, you will be notified of a deadline when the Barnstable Division will be accepting only the revised forms. If you are doing business in other divisions, you are encouraged to check with that division as to its policy on new forms, since the transition period is unique to each division.

INTER ALIA

Bob Reddy's New Location. The Law Office of Robert Reddy announces its relocation to 28 Lake Shore Drive North, E. Falmouth, MA 02536. His phone numbers are 508-457-9025 and 800-252-5291.

Fall Bench and Bar Dinner October 25, 2007. The Fall Bench and Bar Dinner will be held on Thursday, October 25, 2007 at the Ridge Club, 70 Country Club Road, Sandwich, MA. Cocktails and hors d'oeuvres will be served at 6:00 p.m. (cash bar), and dinner will be served at 7:00 p.m. Anyone who has not yet signed up should contact Madeleine at 508-362-2121.