



The Massachusetts Chapter of The Federal Bar Association

Matthew C. Baltay - Editor

NEWSLETTER • DECEMBER 2010

Executive Officers
Full listing on Page 8

President
Christopher P. Sullivan

Vice President
Matthew Moschella

Secretary
Michelle I. Schaffer

Treasurer
Lisa M. Titemore

National Delegate
Daniel B. Winslow

Immediate Past President
Christopher Kenney

Past Presidents
Eve A. Piemonte Stacey
Susan M. Weise

Co-Vice-President for the First Circuit
Dora L. Monserrate-Penagaricano
George Lieberman

Newsletter Editor
Matthew C. Baltay
Foley Hoag LLP

President's Column

by Christopher P. Sullivan



Fall in New England starts a special time of year. The heat of summer gives way to cooler breezes, the changing leaves glow in countless variations of amazing yellows, reds and golds and the college students' return signals the school year beginning.

Fall also starts the new year for the Federal Bar Association and our Massachusetts chapter. This past September, Matt Moschella and I had the privilege of representing our chapter at the Annual FBA convention in New Orleans. It was a proud day for our chapter. At the annual FBA awards luncheon Matt and I accepted awards for our chapter's outstanding newsletter published by Matthew Baltay and for our service to our community through the our many chapter programs. At the President's Inaugural Dinner, where Ashley Belleau of New Orleans was installed as the new FBA national president, the Ilene and Michael Shaw Award was presented to our chapter for the "Job Interviewing Skills Workshop" which the chapter held for the CARE and RESTART program participants. In addition to receiving this prestigious award, a cash grant of \$2,500 was given to our chapter to assist in preserving and expanding our community service and other chapter programs.

On October 13, the chapter's new executive board met and welcomed our new board members, Bill Rocha, Marty Rooney, Lenny Kesten, Jack Schecter and Ray Farquahar. The executive board got right to work planning for many of this year's chapter programs and events. The board made committee assignments for the upcoming year. A list of the "chair" assignments is included at the end of this article. The board welcomes all chapter members who wish to volunteer their talents to assist any committee. The board is also looking for members who might be interested in chairing the following practice areas or programs: Bankruptcy Practice, CARE/RESTART Program, Class Action Practice, and the Securities Practice. If you or another FBA member is interested in these positions, please contact me or any other executive board member.

On November 8, Susan Weise and I represented the chapter at the CARE/RESTART commencement program in Courtroom 10. Chief Judge Mark L. Wolf welcomed the graduates, their families and friends and the dignitaries who attended this wonderful and moving event.

Inside This Issue:

President's Column	1
FBA Sponsored Program on Electronic Filing	2
Young Lawyers Division Update	3
Judges Saris and O'Toole Discuss Trial Time Limits and Case Management with FBA Members.....	3
Recent Changes to the Federal Rules of Civil Procedure.....	4
Supreme Court Clarified that Municipalities' Policy or Customs Must Cause Damages to be Liable Under Section 1983.....	5
Supreme Court Rules on NFL Anti-Trust Challenge	6
Presidents' Opinion Page: A Full Court Press	7
Executive Officers Listing.....	8

Judge Patti B. Saris delivered her remarks on behalf of the district court and Magistrate Judges Leo T. Sorokin and Timothy S. Hillman presented certificates to the proud graduates. The principal address was delivered by R. Gil Kerlikowske, Director of National Drug Control Policy, Executive Office of the President a/k/a the "White House Drug Czar". Mr. Kerlikowske spoke in support of specialized "drug courts" and congratulated the graduates on their accomplishments. Immediately following the very uplifting ceremony, a reception for all participants was held in the Jury Assembly Room. As part of the celebration the district court presented the FBA with a certificate of Appreciation for the chapter's support of and assistance to the CARE/RESTART programs.

Chapter President-Elect, Mary Jo Harris who chairs the chapter's popular "Breakfast with the Judge" program worked with Judge William Young to stage the first two events: The November 17 program on "Changes to the Federal Rules of Civil Procedure" with Magistrate Judge Robert B. Collings and the November 18 program on the Electronic Court Filing system with Virginia Hurley the district court's Outreach/ Training Coordinator. Both programs were extremely successful and well attended.

On Thursday, December 9, 2010, Judge Patti Saris and Judge George O'Toole spoke about the use of Trial Time Limits and Case Management Techniques. The topics and dates for the rest of the "Breakfast with the Judge" series will be announced shortly so watch our website for the details of these events.

On Tuesday November 16, 2010, I was pleased to attend a meeting of the Civil Litigation Section Council of the Massachusetts Bar Association at the Federal Courthouse in Worcester. Judge F. Dennis Saylor IV and Magistrate Judge Timothy S. Hillman gave the attendees their insights on practicing in their court. It was extremely interesting and informative event that created renewed interest in holding a joint meeting with the Massachusetts Bar Association and the Worcester County Bar Association on the state of the federal courts in Worcester. I hope to have more information for you on that program soon.

The rest of 2010/2011 FBA calendar is filling up fast with great programs and events. Lenny Kesten and Marty Rooney are already hard at work planning our chapter's signature event, the Annual Judicial Reception which will be held as usual in late March or early April and will honor a member of the judiciary. Don't miss this great reception that offers a terrific opportunity to socialize with other FBA members and the judiciary. As soon as more details on the event are available, chapter members will be notified by email.

All the great plans being made this year for our chapter are exciting for all of us in the chapter. I invite you to get involved with the chapter's work so you can help it deliver real value to our membership and foster deep bonds of community and professionalism among our members and the judiciary.

List of Chapter "Chairs"

Awards Chair: William J. Rocha/Kate Cook

Membership Chair: Jack C. Schecter

Clerk's Liaison: Michelle Rynne

Communications Chair: Jonathan D. Mutch/Matthew C. Baltay

Diversity Chair: Kate Cook

Professional Development/CLE Education Chair: Tony Mirenda

Young Lawyer Division: Alex G. Henlin

Law School Liaison Chair: Cornelius J. Moynihan, Jr.

Bar Association Liaison: Jonathan I. Handler

Criminal Law Practice: Scott P. Lopez/Rayford A. Farquhar

Annual Judicial Reception: Lenard H. Kesten/Martin J. Rooney

Volunteer Mediation Program: Patrick Curran/Rayford A. Farquhar

Civil Rights Chair: Howard Friedman

IP Practice Chair: William J. Rocha/Jack C. Schecter

ECF Committee: Howard Friedman/Michelle Rynne

CARE/RESTART Program: OPEN

Securities Practice Chair: OPEN

Class Action Practice Chair: OPEN

Bankruptcy Practice Chair: OPEN

FBA Sponsored Program on Electronic Filing

On November 18, the FBA sponsored a program at the Moakley Courthouse regarding the District of Massachusetts CM/ECF filing procedures. It was given by Ginny Hurley, who oversees the ECF system for the court. Ms. Hurley provided a very informative overview of the procedures for electronic filing and answered questions. She stressed the fact that the clerks are there to help those who use the ECF system. Ms. Hurley emphasized that people should not hesitate to call the Help Desk with any questions (866-239-6233) (Available 8:30 until 4pm). She also suggested that people start the filing procedure earlier in the day in case there are any questions and advised against waiting to file until the last minute.

Young Lawyers Division Update

Young Lawyers Division Plans Active 2011

The Massachusetts Chapter's YLD is laying the groundwork for a busy 2011. Plans are currently underway for the following programs, which will be publicized by e-mail to the full membership. The YLD cordially invites interested members and non-members to attend.

- **Openings/Closings Presentation.** YLD Secretary Lisa Maki (City of Boston Law Department) is working with James Budreau of the Massachusetts Association of Criminal Defense Lawyers to present a seminar discussion on effective strategies for openings and closings. The panel will feature civil and criminal practitioners, as well as members of the bench. The program is planned for January 2011.
- **Distinctions Between State & Federal Practice.** Once is precedent, twice is tradition. YLD President Alex Henlin (Edwards Angell Palmer & Dodge LLP) is organizing the second annual presentation of this program, to educate members of the bar on some of the realities of practice in the federal court. Virginia Hurley from the clerk's office is on the invitation list, and the event is scheduled for late February 2011.
- **Social Events.** YLD Treasurer Andrew Kepple (Kenney & Sams, PC) is working with the Massachusetts Bar Association's YLD to organize joint social and networking events that will be of benefit to all members. A speed-networking event is slated for March 2011. Details will be forthcoming.
- **Interviewing Skills Workshop.** The entire YLD leadership team, including Chair Elect Ian Prior (City of Boston Law Department) and Vice Chair Evan Ouellette (City of Boston Law Department), is working to put together an interviewing skills workshop for area law students and other younger lawyers who have been affected by the economy. Details are still being worked out, but the intent is to put this program on at a Boston-area law school early this coming spring.

The YLD continues to welcome new members, and has as its mission the introduction of younger lawyers to the life and work of the FBA. If you have questions, please feel free to direct them to Chair Alex Henlin at ahenlin@eapdlaw.com or 617.239.0100. We look forward to seeing you at an upcoming event.

Judges Saris and O'Toole Discuss Trial Time Limits and Case Management with FBA Members

by Eric A. Haskell, Foley Hoag LLP

On December 9, 2010, the Massachusetts chapter of the FBA hosted its most recent "Breakfast with the Federal Bench," featuring Judges Saris and O'Toole on the topic of the use of Trial Time Limits and Case Management Techniques.

With respect to case management, Judge Saris noted her reluctance to grant more than one extension of the discovery completion deadline except in exceptional circumstances. The attorneys in attendance, however, responded that a far-off discovery deadline that may or may not later be extended offers little incentive for counsel to work together to accomplish discovery, and little opportunity to resolve discovery-related issues in a cooperative fashion. The attendees instead advocated for the court to take a more "active" role in case management. The attendees particularly suggested holding more frequent Rule 16 conferences to encourage the parties to accomplish discovery, to raise and resolve discovery-related issues before they become roadblocks, and to encourage the parties to resolve the case. The attendees believed that the costs associated with more frequent pre-trial conferences would be outweighed by the opportunity to avoid protracted discovery and discovery-related motion practice. Judges Saris and O'Toole both suggested that Magistrate Judges may have a role to play in such "active" case management.

With respect to trial time limits and trial management, Judge O'Toole indicated that he has found time limits to be effective on the rare occasions that he has imposed them. Judge Saris, on the other hand, described her practice of routinely establishing time limits by asking counsel to estimate the time required for direct and cross of each witness at a pre-trial conference. Judge Saris also described her practice of requiring each side to disclose on the morning of each day of trial the documents to be introduced that day, and then hearing motions related to those documents before reconvening the trial for the day. An attendee suggested that, when setting time limits, the Judges might allocate additional time to the plaintiff, as the defendant will not need as much time to establish the basic facts of the case.

Judge O'Toole noted that his session of the court is participating in a pilot program that converts all trial exhibits to electronic format and allows the juror to view those documents on television screens in the jury room. Both Judges emphasized that jurors will carefully analyze trial exhibits in the jury room.

Finally, the Judges cautioned the attendees against losing the jury's interest through use of lengthy video deposition testimony. The Judges suggested that taking testimony from an absent witness via live video feed may be a more effective alternative. An attendee additionally suggested that the Judges might allow counsel to say a few words "introducing" the video deposition clip, thereby providing context to the jury and obviating the need for a lengthy clip.

Recent Changes to the Federal Rules of Civil Procedure

by *Stephany G. Collamore, Foley Hoag LLP*

Recent amendments to the Federal Rules of Civil Procedure ("Civil Rules"), which went into effect on December 1, 2010, extend work-product protection to the discovery of draft reports by testifying expert witnesses and, with three important exceptions, communications between those witnesses and retaining counsel. In addition to the expert discovery amendments, other amendments were made that affect the following: procedures for presenting and deciding summary judgment motions; affirmative defenses that must be asserted in response to a pleading; and Illustrative Civil Form 52 (technical and conforming amendments).

Discovery of Expert Witness Amendments

The amendments to Rule 26 address the practical problems created by changes made in 1993, which were interpreted to allow discovery of all communications between counsel and expert witnesses and all draft expert reports, and to require reports from all witnesses offering expert testimony.

- *Testifying experts not subject to Rule 26(a)(2)(B).* New Rule 26(a)(2)(C) requires a lawyer relying on a witness who will provide expert testimony but is not required to provide a Rule 26(a)(2)(B) report – because the witness is not retained or specially employed to provide expert testimony and is not an employee who regularly gives expert testimony – to disclose the subject matter of the witness's testimony and summarize the facts and opinions that the witness is expected to offer. It is intended that the summary of facts include only the facts that support the opinions; if the witness is expected to testify as a "hybrid" witness to other facts, those facts need not be summarized. Drafts of the disclosure are protected from discovery by the work-product doctrine.
- *Drafts protected from discovery.* New Rule 26(b)(4)(B) applies the work-product protections of Rules 26(b)(3)(A) and (B) to limit discovery of drafts of Rule 26(a)(2)(B) reports and the newly created Rule 26(a)(2)(C) disclosures discussed above.

- *Communications protected from discovery.* New Rule 26(b)(4)(C) protects communications between Rule 26(a)(2)(B) expert witnesses and retaining counsel, regardless of form (oral, written, electronic, or otherwise), subject to three exceptions: communications (1) relating to the expert's compensation; (2) identifying facts or data considered by the expert in forming his opinions; and/or (3) identifying assumptions relied on by the expert in forming the opinions. Please note that this protection is not extended to Rule 26(a)(2)(C) experts.

Summary Judgment Amendments

The amendments to Rule 56 make the procedures for presenting and deciding summary judgment motions consistent with those already used in many courts. All changes are procedural only and do not affect the summary judgment standards or burdens. Changes include:

Wording changes. Revised Rule 56(a) substitutes "shall" for "should," and "dispute" for "issue" in its statement of the summary judgment standard. In 2007, as part of the Style Project, "should" replaced "shall" in the statement of the summary judgment standard. The change was intended to be stylistic only and not intended to change the substantive meaning or make prior case law inapplicable. Nonetheless, the advisory committee decided the change created an unacceptable risk of changing the substantive summary judgment standard.

"Pinpoint citation" requirement. Revised Rule 56(c)(1) requires citation to "particular parts" of those materials in the record upon which a party relies to demonstrate that a fact either is or is not genuinely disputed.

Challenging admissibility of evidence. Revised Rule 56(c)(2) clarifies the procedure for challenging the admissibility of summary judgment evidence.

Failure to support or address a fact. Revised Rule 56(e) sets out the court's options when an assertion of fact has not been properly supported or responded to, including providing the party in question an opportunity to do so, deeming the fact undisputed for purposes of the motion, and granting summary judgment where the motion and supporting materials – including the facts considered undisputed – warrant it.

Practice Tip: Massachusetts Local Rule 56.1 requires "page references" to supporting documentation in the statement of facts sections of motions for summary judgment and oppositions thereto. Thus, the "pinpoint citation" amendment to Rule 56 likely will not require a change in practice for those practicing in the District of Massachusetts. However, it remains to be seen whether a page reference is sufficiently "particular" for Rule 56 purposes.

Affirmative Defenses Amendment

“Discharge in bankruptcy” is deleted from the Rule 8(c) (1) list of affirmative defenses that must be asserted in response to a pleading.

Application

The amended Rules govern all proceedings commenced after December 1, 2010, as well as all proceedings still pending “insofar as just and practicable.” The public comments during the notice and comment period for the amendments to the Civil Rules indicated that the vast majority of legal practitioners supported the changes.

On the whole, the expert witness amendments are a positive change for legal practitioners who have long struggled to obtain reports from certain experts and to avoid creating drafts of such reports. In particular, new Rule 26(a)(2)(C) is designed to strike a balance between the benefits of providing advance notice of the contents of expert testimony with the difficulty of obtaining an expert report from certain experts not subject to Rule 26(a)(2)(B) (e.g. treating physicians and government accident investigators).

The summary judgment amendments are also positive in that they bring Rule 56, the text of which has not been significantly changed in substance for over forty years, closer to actual practice and make the procedures for bringing and responding to summary judgment motions clearer. In addition, the return to “shall” in the statement of the summary judgment standard allows years of case-law interpretation of the standard to continue to develop.

Supreme Court Clarified that Municipalities’ Policy or Customs Must Cause Damages to be Liable Under Section 1983

by Brian K. Wells, Robins, Kaplan, Miller & Ciresi

In *Los Angeles County v. Humphries*, the Supreme Court held that a plaintiff filing suit against a municipality under 42 U.S.C. § 1983 (“Section 1982”) must show that their injury was caused by a municipal policy or custom before prospective relief (e.g. injunction, declaratory judgment, etc.) may be granted. 2010 U.S. LEXIS 9444, No. 09-350 (November 30, 2010). The Court extended the holding of *Monell v. New York City Department of Social Services* where it held that a plaintiff must show a municipality’s policy or custom caused the plaintiff’s injury in order to receive damages under Section 1983.

Two individuals brought the action claiming the California Child Abuse and Neglect Reporting Act violated their Fourteenth Amendment due process rights. This California Statute requires the California Department

of Justice to maintain a Child Abuse Central Index (the “Index”) containing allegations of child abuse from law enforcement and other state agencies. This Index contained any report that was “not unfounded” even if the reports were ultimately inconclusive. The Statute did not provide for a mechanism to challenge a person’s wrongful inclusion in the Index, nor did California or Los Angeles have such procedures at the time of the suit.

The Plaintiffs were wrongfully included in the Index. They sued under Section 1983 contending that the Statute was unconstitutional because it deprived them of due process to challenge their inclusion in the Index. The Southern District Court of California dismissed the matter because it found that California had not deprived plaintiffs of a constitutionally protected “liberty” interest. The Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit held that the Fourteenth Amendment required the State to provide those included in the list “some kind of hearing.” The Court awarded the plaintiffs \$600,000 in attorney’s fees under Section 1983. Los Angeles appealed this award of attorney’s fees.

On Appeal, Los Angeles contended that because it was a municipality, it could only be liable if its “policy or custom” caused deprived the plaintiff’s federal right. Here, the state law deprived the plaintiffs of their constitutional rights. The Supreme Court agreed.

Analyzing Section 1983’s history, the Supreme Court observed in 1961 that it initially ruled that this section did not apply to municipalities. The Court reasoned that the legislature rejected an amendment that would have created liability upon municipalities “by private persons.” This rejection led the Court to believe that Section 1983 did not apply to municipalities. The Court, in *Monell*, reversed itself sixteen years later. This time the Court concluded that Congress rejected the amendment, not because municipalities could not violate Section 1983, but because the amendment would create liability on the municipality for acts of others. Thus, the Court observed, if the municipality causes the violation, liability is proper and does not run afoul of the law’s congressional intent.

Conversely, a municipality cannot be liable under Section 1983 for acts of others. The Court reasoned that such principle extends to the municipality regardless of the relief sought. Applying this reasoning, the Court observed that Los Angeles’ liability did not turn on whether a plaintiff sought monetary damages or an injunction. Rather, the question is whether the municipality’s “policy or custom” caused the plaintiff’s deprivation of a federal right. Because Los Angeles’ policies or customs did not

cause the plaintiff's loss, any award to plaintiffs at the expense of Los Angeles was unwarranted.

The Court reversed the Ninth Circuit and remanded for further proceedings.

Supreme Court Rules on NFL Anti-Trust Challenge

*by Ian D. Prior, Assistant Corporation Counsel,
City of Boston Law Department*

In a recent 9-0 decision, the United States Supreme Court held that, for the purposes of the Sherman Anti-Trust Act, the thirty-two team National Football League (the "NFL") is not a single entity, but rather that "each of the teams is a substantial, independently owned and independently managed business." Consequently, any decision by the NFL, whether it be for the purposes of licensing, labor negotiations, or broadcasting right, is subject to a rule of reason analysis.

The Respondent, NFL, is an unincorporated association that includes 32 separately owned and operated professional football teams. In 1963, the teams formed National Football League Properties ("NFLP") for the purpose of developing, licensing, and marketing their intellectual property. From 1963 through 2000, NFLP granted non-exclusive licenses to vendors to manufacture and sell team apparel. The Petitioner, American Needle, Inc. ("American Needle"), was one of those apparel vendors that contracted with NFLP prior to 2000. In 2000, however, the team owners voted to authorize NFLP to enter into an exclusive ten year contract with Respondent Reebok International, Ltd. ("Reebok") in which Reebok would manufacture and sell headwear bearing NFL team logos. American Needle sued the NFL and Reebok in the Federal District Court for the Northern District of Illinois, alleging that the agreement between the NFL and Reebok violated §§ 1 and 2 of the Sherman Act. The Court granted summary judgment for the NFL and Reebok, holding that the NFL was a single entity consisting of thirty-two teams, and thus was not liable under the Sherman Act. On appeal, the Seventh Circuit affirmed, holding that the NFL was a single entity because the teams "can function only as one source of economic power when collectively producing NFL football."

The Supreme Court granted certiorari on the limited issue of whether the teams making up the NFL are capable of engaging in "a contract, combination * * * or conspiracy" as defined by the Sherman Act, or whether they must be viewed as a single entity.

In an unanimous opinion authored by Justice Stevens, the Court reviewed its precedents analyzing whether a joint venture amounted to a "single entity" and explicitly held that concerted action under § 1 of the Sherman Act does not depend on whether the parties involved are legally distinct entities, but rather on how "the parties engaged in the alleged anticompetitive conduct actually operate." In other words, as the Court opined, the inquiry should be on the substance of the conduct rather than the form of the enterprise

Applying the "substance over form" test, the Court held that the NFL teams compete with each other in the intellectual property market. By way of example, the Court noted that the Indianapolis Colts and the New Orleans Saints are "two potentially competing suppliers of valuable trademarks." Thus, NFL teams are not pursuing the "common interests of the whole league" when they license their intellectual property, but are instead trying to pursue the specific interests of their own corporation/team through the vehicle of NFLP. Consequently, the Court held that the NFLP was nothing more than a formalistic shell for a concerted effort between thirty-two corporations whose individual interests were distinct from the well-being of the NFLP.

The Court, however, went on to recognize that there were certainly acceptable reasons for the NFL to engage in collective decision making, but that those decisions should be subject to rule of reason analysis. Therefore, the Court reversed the Seventh Circuit's decision and remanded the case to the district court to conduct a rule of reason analysis on the allegations.

The Court's decision has the potential for repercussions that go far beyond the specific parties involved in the case. The NFL-NFLPA collective bargaining agreement expires after the 2010 season and the parties have not made significant progress towards a new deal. If the CBA expires without a new one in place, and the NFL were considered a single entity, it would be able to unilaterally impose rules on player contracts, benefits, etc. Because the Court has made clear, however, that the NFL is not a single entity, the players now have the option of decertifying their union and bringing legal actions against the league for any unilateral action.

Additionally, and as argued by MasterCard and Visa in their Amicus Brief, modern financial products are often the result of joint ventures between separate entities. The Courts ruling could trigger increased anti-trust litigation directed at those joint ventures, which would drive up litigation costs and result in stifled innovation and increased costs to the consumer.

PRESIDENTS' OPINION PAGE

A Full Court Press

by Christopher P. Sullivan and Christopher A. Kenney



On March 12, 2009, the federal court in Massachusetts suffered a grievous loss. Judge Reginald Lindsay, only the second African-American ever to serve as U.S. District Court Judge in Massachusetts, died after a lengthy illness. He was only 63 years old.

The untimely death of this distinguished judge was a blow to the federal court and the people of Massachusetts. The United State Senate is compounding that loss by refusing to hold a vote on President Obama's nominee to fill Judge Lindsay's seat on the federal bench, Middlesex Deputy District Attorney, Dianne J. Casper.

In August, the Senate Judiciary Committee sent Ms. Casper's nomination to the full Senate for an up or down vote. Sadly, that vote has never been taken even though Massachusetts Senators, John Kerry and Scott Brown both recommended Ms. Casper be confirmed.

Ms. Casper is not alone in awaiting her seemingly endless confirmation process. Currently about 100 of the 876 federal judgeships are vacant. That's almost one out of every eight seats in the federal judiciary. What's more, there are 22 judicial nominations that have been reported by the Senate Judiciary Committee and sent to the Senate for confirmation that are just sitting on the Senate's Executive Calendar. Some have been on the calendar since as far back as January 28, 2010. The backlog of judicial nomination confirmations is causing substantial delay in cases being heard in federal court, and the bulk of this delay falls on the civil case docket because criminal cases take priority.

The reason why the Senate hasn't voted is entirely clear, however, part of the reason for these delays is the "secret hold" that allows any senator to delay any nomination anonymously. This practice, employed by both Senators from both parties, seriously undermines the credibility of our judicial system and should not be tolerated. Massachusetts Senators, Democrat John Kerry and Republican Scott Brown have both openly opposed the anonymity of the "secret hold" and have petitioned the Senate to repeal it.

Regardless of which political party is at fault, we in Massachusetts need less quacking and more action from this lame duck Senate, especially for nominees who are unopposed by either party. This past June, President Obama's nomination of Judge Audrey Fleissig was confirmed by a Senate vote of 90 to 0. Notwithstanding her strong bi-partisan support, Judge Fleissig languished in the confirmation process for over four months after the Senate Judiciary Committee reported her nomination to the Senate for confirmation. This type of childish delay weighs heavily on our already backlogged judicial system. It should not be tolerated.

Like Judge Fleissig, Denise Casper is not a controversial nominee. She has the support of both Senators Kerry and Brown and has been deemed "unanimously well qualified" for confirmation to the court by the American Bar Association's Standing Committee on the Federal Judiciary. A "lame duck" Congress is no excuse for the inaction on pending Federal Judicial nominations. An up or down vote on Ms. Casper's nomination, and all other nominations referred to the Senate floor by the Judiciary Committee, should be delayed no longer.

Failure by the Senate to act by the end of this year will force Ms. Casper's nomination and all other judicial nominations to begin the entire process all over again. What could be more wasteful of scarce government time and resources? The Senate's failure to vote will leave Massachusetts in Limbo for months or even years for a full judicial bench. The longer Judge Lindsay's seat sits vacant, the more injustice is done to Massachusetts residents.

The 6 million people of the District of Massachusetts need the Senate to vote on Denise J. Casper's nomination. We ask Senators Kerry and Brown to push for this nomination to be voted upon by the entire Senate as soon as possible so that Massachusetts residents can have their timely day in federal court.

Christopher P. Sullivan is the President of the Massachusetts Chapter of the Federal Bar Association and Christopher A. Kenney is the immediate past President of the Massachusetts Chapter of the FBA.

Executive Officers:

President

Christopher P. Sullivan
Robins, Kaplan, Miller & Ciresi, LLP
800 Boylston Street
Boston, MA 02199
(617) 267-2300
cpsullivan@rkmc.com

President Elect

Mary Jo Harris
Morgan, Brown & Joy, LLP
200 State Street
Boston, MA 02109
(617) 788-5011
mharris@morganbrown.com

Vice President

Matthew Moschella
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
(617) 646-2245
mcmoschella@sherin.com

Secretary

Michelle I. Schaffer
Campbell, Campbell, Edwards & Conroy
One Constitution Plaza
Boston, MA 02129
(617) 241-3102
mschaffer@campbell-trial-lawyers.com

Treasurer

Lisa M. Tittlemore
Sunstein Kann Murphy & Timbers LLP
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292
ltittlemore@sunsteinlaw.com

National Delegate

Susan M. Weise
City of Boston Law Department
City Hall Room 615
Boston, MA 02201
(617) 635-4040
susan.weise@cityofboston.gov

Immediate Past President

Christopher A. Kenney
Kenney & Sams PC
Old City Hall
45 School Street
Boston, MA 02108
(617) 722-6045
cakenney@KandSLegal.com

Past President

Eve A. Piedmonte Stacey
Assistant U.S. Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3369
eve.stacey@usdoj.gov

Co-Vice-President for the First Circuit

George Lieberman
Vetter & White
20 Washington Place
Providence, RI 02903
(401) 421-3060
glieberman@vetterandwhite.com

Co-Vice-President for the First Circuit

Dora L. Monserrate-Penagaricano
Monserrate & Monserrate
606 Ave Munoz Rivera
San Juan, PR 00918
(787) 764-6060
dmp@monserratelaw.com

Newsletter Editor

Matthew C. Baltay
Foley Hoag LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1262
mbaltay@foleyhoag.com