Rhode Island Bar Journal

Rhode Island Bar Association Volume 64. Number 5. March/April 2016

Quick Tips on Student Loan Law

Broker-Dealer Liability

Social Security Strategies Elimination

BOOK REVIEW: *The Battle for James Joyce's Ulysses*

RHODE ISLAND Bar Association
1898

Articles

Features

CRESCENT PARK CAROUSEL, EAST PROVIDENCE, RI

Built in 1895 by Charles I.D. Looff, the Crescent Park Carousel is the largest and most elaborate of Looff's works featuring 62 beautifully hand-carved figures, four fanciful chariots and elaborate embellishments of decorative panels, beveled mirrors, faceted glass jewels, electric lights, colored sandwich glass windows, and its original band organ. Saved in the 1970s by a handful of residents, the Crescent Park Carousel was placed on the National Register of Historic sites and places in 1976. In 1985, the Rhode Island General Assembly proclaimed it the State Jewel of American Folk Art, and, in 1987, the US Department of the Interior, National Park Service, designated the Carousel as a National Historic Landmark.

Cover Photograph by Brian McDonald

RHODE ISLAND BAR ASSOCIATION LAWYER'S PLEDGE

As a member of the Rhode Island Bar Association, I pledge to conduct myself in a manner that will reflect honor upon the legal profession. I will treat all participants in the legal process with civility. In every aspect of my practice, I will be honest, courteous and fair.

Direct advertising inquiries to the Editor, Frederick D. Massie, Rhode Island Bar Journal, 41 Sharpe Drive, Cranston, RI 02920, (401) 421-5740.

USPS (464-680)ISSN 1079-9230
Rhode Island Bar Journal is published bimonthly by the Rhode Island Bar Association, 41 Sharpe Drive, Cranston, RI 02920.

PERIODICALS POSTAGE PAID AT PROVIDENCE, RI

Subscription: $30 per year

Postmaster
Send Address Correction to:
Rhode Island Bar Journal
41 Sharpe Drive
Cranston, RI 02920

www.ribar.com

Planning For Change

Melissa E. Darigan, Esq.
President
Rhode Island Bar Association

Can anyone really plan for change? Change implies some activity that is on the horizon, something that is yet to come. Change is also described as disruption, confusion or disorder and upsetting to normal or expected functioning. These characteristics, combined with many attorneys' innate resistance to change, may make planning for change seem an impractical and empty exercise. But, as I've written and spoken about during this term, change in the legal profession is not some amorphous concept set in the future. Change is here, and we have an obligation to ourselves, the administration of our system of justice, and the public to plan for how we will adapt.

So the time is right for self-evaluation: to assess where we are and where we want to go, to seek new ways to better meet the needs of our members and the profession and to address the many issues confronting the public's access to justice. Our unchartered future and the challenges facing the profession demand it. And, whether we embrace it or not, change means opportunity and planning allows us to see and (hopefully) capitalize on opportunities.

The time is right for self-evaluation: to assess where we are and where we want to go, to seek new ways to better meet the needs of our members and the profession, and to address the many issues confronting the public's access to justice.

In my view, the Bar Association's plan for addressing the changing legal landscape should focus on four areas. First is maintaining an active and energetic presence in thought leadership within the legal profession. The depth and breadth of our members' expertise in wide-ranging areas give us not only a solid foundation from which to speak, but the gravitas to be a prominent voice in developing ways to innovate and adapt to change with our partners, including the courts, legislature, law school, and legal services providers. Our Limited Scope Representation Committee's work this year is a blue-ribbon example of thought leadership. This committee harnessed expertise from all areas including practitioners in all of the state courts, insurance/risk-management specialists, public services providers, and experts in ethics and professionalism. After much debate and discussion, the committee proposed a comprehensive series of rules amendments and model forms on the practice of limited scope representation for presentation to the Rhode Island Supreme Court. Our Bar Association must continue to take a leading role in future discourse on issues relating to unrepresented litigants and other challenges confronting our profession.

The second area, closely aligned to the first, is fostering communication and collaboration among all involved in the administration of justice. The Bar Association provides multiple, meaningful ways to promote discussion about issues, share information, and work collaboratively with our partners to advance a common goal or address mutual concerns. Chief among these is the work of the Bar's committees, as these committees frequently host guest speakers in substantive disciplines and solicit participation and input from judges and regulators. Committees also actively work on projects with our partners to improve the legal system, including proposing rule amendments, drafting and commenting on legislation, and participating in public services programs. Another example is the new *Partners Overcoming Domestic Violence Project*. This joint undertaking by the Bar's Volunteer Lawyer Program, with Rhode Island Legal Services, Roger Williams University School of Law and the Coalition Against Domestic Violence, focuses on domestic violence legal intervention. In this project, new volunteer attorneys are paired with a seasoned attorney mentor, receive comprehensive training and provide free legal services and advocacy to victims of domestic violence. As resources for public legal services tighten – funding and time just to name a few – collaborating with those who share our mission is essential to the Bar Association's efforts to help members and the profession to adapt to change.

Third, the Bar Association can help attorneys prepare for change by providing quality legal education and training in all phases of our members' careers, from new attorneys with their unique challenges to changes in attorney practice areas (whether voluntary or not) to attorneys who are winding down practices. We offer seminars on the nuts and bolts of the practice, new developments in the law and, increasingly, sessions devoted to law practice management and technology. Going forward we must emphasize programs that help attorneys with technologies making them more effective and efficient and better able to meet the practice of law's new demands.

The fourth area is our Public Services programs. As exemplified by the domestic violence intervention partnership, this work integrates the strengths of the Bar Association in all three areas noted above. Much of this work goes on behind the scenes, and, unfortunately, too few of us know the outstanding service we are providing to the Rhode Island public and judicial system. Suffice it to say, we are ahead of the curve in leading discussion on the obstacles related to access to justice and collaboration is our middle name. The myriad issues with the public's access to justice are only going to grow, and the Bar Association must stay a relevant and influential player in resolving these challenges.

At the core of the Bar Association's mission is enhancing member value, improving the delivery of legal services, advancing the interests and reputation of the legal profession and serving the public. Personally, and this should come as no surprise, I believe the Bar Association is making huge contributions in these areas. But we can always do better. This is where the planning comes in.

Our planning process is not fully developed, but I am convinced that having a plan to help us navigate the challenges of today and tomorrow is essential to our collective interests. I am also convinced that robust outreach to members is essential to evaluate our current activities, setting our objectives and enhancing member value. To be fair, value will not be the same for every member. Where we work and live, the type of law we practice, and where we are in our careers all affect how we view the Bar Association. I encourage you though, believers and non-believers alike, to add your views and participate when we reach out. ❖

Are you looking for answers to practice-related questions?

Try the Bar's dynamic List Serve!

According to Rhode Island Bar Member and Johnston-based Attorney Angelo A. Mosca III: ***In my opinion, the Bar's List Serve is one of the best things to come to the Bar in recent years.***

Since its inception under the sponsorship of Past Bar President Michael McElroy, our Bar's List Serve has grown exponentially in participating members and in a wide range of answered questions. From nuances of the Rhode Island Courts e-filing system to requests for local and out-of-state referrals, List Serve members are providing each other with timely answers. List Serve topics encompass a wide range of practice areas including consultants, traffic violations, medical marijuana, landlord/tenant, divorce, *pro hac vice*, immigration and more!

Free and available for all actively practicing Rhode Island attorney members, the Bar's List Serve gives you immediate, 24/7, open-door access to the knowledge and experience of hundreds of Rhode Island lawyers. If you have a question about matters relating to your practice of law, you post the question on the List Serve, and it is emailed to all list serve members. Any attorney who wishes to provide advice or guidance will quickly respond.

If you have not yet joined the List Serve, please consider doing so today. To access this free member benefit go to the Bar's website: **ribar.com**, click on the **MEMBERS ONLY** link, login using your Bar identification number and password, click on the **List Serve** link, read the terms and conditions, and email the contact at the bottom of the rules. It's that easy!

RHODE ISLAND BAR JOURNAL

Editorial Statement

The Rhode Island Bar Journal is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials represent the views of at least two-thirds of the Editorial Board, and they are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

Article Selection Criteria

- The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by members of the Rhode Island Bar Association. The *Bar Journal* does not accept unsolicited articles from individuals who are not members of the Rhode Island Bar Association. Articles previously appearing in other publications are not accepted.
- All submitted articles are subject to the Journal's editors' approval, and they reserve the right to edit or reject any articles and article titles submitted for publication.
- Selection for publication is based on the article's relevance to our readers, determined by content and timeliness. Articles appealing to the widest range of interests are particularly appreciated. However, commentaries dealing with more specific areas of law are given equally serious consideration.
- Preferred format includes: a clearly presented statement of purpose and/or thesis in the introduction; supporting evidence or arguments in the body; and a summary conclusion.
- Citations conform to the Uniform System of Citation
- Maximum article size is approximately 3,500 words. However, shorter articles are preferred.
- While authors may be asked to edit articles themselves, the editors reserve the right to edit pieces for legal size, presentation and grammar.
- Articles are accepted for review on a rolling basis. Meeting the criteria noted above does not guarantee publication. Articles are selected and published at the discretion of the editors.
- Submissions are preferred in a Microsoft Word format emailed as an attachment or on disc. Hard copy is acceptable, but not recommended.
- Authors are asked to include an identification of their current legal position and a photograph, (headshot) preferably in a jpg file of, at least, 350 d.p.i., with their article submission.

Direct inquiries and send articles and author's photographs for publication consideration to:
Rhode Island Bar Journal Editor Frederick D. Massie
email: **fmassie@ribar.com**
telephone: **401-421-5740**

RHODE ISLAND BAR ASSOCIATION VOLUNTEER LAWYER PROGRAM 2015 Highlights and Accomplishments

Program Summary

In keeping with its mission, The Rhode Island Bar Association's Volunteer Lawyer Program (VLP) continued to provide legal assistance to those who cannot obtain legal representation either on their own or through other legal resources. Administered by the Bar Association for twenty-nine years, the Volunteer Lawyer Program continues to offer many interesting opportunities for the private bar to handle *pro bono* cases. VLP membership provides a satisfying variety of experiences that cannot be duplicated elsewhere and can open the door to justice for low income citizens. Volunteer Lawyer Program attorneys impact their clients' lives in a significant and purposeful way. Through the VLP, volunteer attorneys know their contributions are essential to the system of justice. Accordingly, the advocacy and dedicated public service activities of VLP members reflect the ethical commitment of the Bar Association to the delivery of *pro bono* assistance to those who need help the most.

Education: A Member Benefit

Ongoing recruitment of members is essential to respond to the needs of the community for *pro bono* assistance. The most effective method of member recruitment and retention is through sponsoring and providing free continuing legal education in cooperation with the Bar's Continuing Legal Education (CLE) department.

This year, through the excellent efforts of the Public Service Involvement Committee, a free, three-part seminar series, *Special Issues in Family Law*, was offered to all volunteer attorneys. This outstanding series was held in September, October and November of 2015 and covered equitable distribution in no asset cases/bankruptcy, representing physically and mentally challenged clients, and ethical considerations. Volunteer attorneys who attended these sessions agreed to accept a *pro bono* family law case.

Hon. John E. McCann, III, Barbara L. Margolis, Esq., and Elizabeth W. Segovis, Esq. at the Ethical Considerations session of the three-part series "Special Issues in Family Law."

The Honorable John E. McCann, III, Dr. Karyn Horowitz and Attorneys Carolyn R. Barone, Jennifer A. Griffith, Clare T. Jabour, Christopher M. Lefebvre, Barbara L. Margolis, and Elizabeth W. Segovis were the distinguished panelists for this well attended series. Through their efforts, the program was able to place over 40 *pro bono* family law cases.

Attorneys who are Volunteer Lawyer Program members and contribute and report thirty plus hours of *pro bono* service annually are eligible to receive CLE coupons to be used in the following calendar year to attend one, *free*, three-credit seminar or three Food for Thought seminars of their choice. Instituted in 2009, this policy reflects the Bar's long standing support of *pro bono* legal assistance and public service.

Volunteer Recognition/Events

The *Pro Bono* Awards presentation was held at the Bar Association's Annual Awards Reception on June 18, 2015. Bar President Bruce McIntyre presented Attorney James P. Creighton with the *Pro Bono* Publico Award for his outstanding contributions to the *pro bono* effort. Attorney Robert A. Arabian, who was traveling, received his award for his outstanding *pro bono* efforts from President Melissa E. Darigan at the Bar's July House of Delegates meeting at the new Bar headquarters in Cranston. Immediate past Bar President McIntyre was in attendance. The amazing *pro bono* contributions of these two award recipients exceeded 200 hours!

James P. Creighton, Esq.

Robert A. Arabian, Esq.

Placement Strategies

VLP staff attended numerous 2015 Continuing Legal Education seminars at the Rhode Island Law Center, as well as at off site locations, where they recruited new attorney members and placed cases. *Pro bono* case summaries were prepared and distributed to attendees to emphasize the need for *pro bono* legal assistance and encourage participation. This was one of several effective methods of case placement, in addition to the traditional direct calls to panel members and blast e-mailing. Direct mail was also used to promote free CLE offerings.

The majority of potential clients contacted the VLP by telephone to request *pro bono* service. The public is continually referred to this program by the human service network, Rhode Island Legal Services and other legal assistance agencies, Internet/Rhode Island Bar Association website, law offices, the Courts, and other sources.

In 2015, 949 requests for assistance were accepted for bankruptcy, collections, consumer, education, employment, foreclosures, guardianships, landlord/tenant, license registry, non-profit, probate, tort defense, and family law issues.

continued on next page

Pro Bono Publico: 30 Years Old and Growing Stronger Every Day!

During the thirtieth anniversary year (1986-2016) of the Rhode Island Bar Association's Volunteer Lawyer Program, the Bar asks members to consider serving as a legal representative for those in greatest need and afford them legal counsel.

PRO BONO PUBLICO RESOLUTION

The Rhode Island Bar Association adopts the following policy and urges its members to act accordingly.

We urge our members to engage in public service. Recognizing the continuing need for legal assistance for economically-disadvantaged citizens attempting to obtain legal services in our state, we, as an association, are mindful of the opportunity that is present for us to fulfill our moral, ethical and social duty to those who have limited or no access to the legal system. We therefore reaffirm our strong commitment to the delivery of legal services to the poor by strongly urging each member of this association to render pro bono public legal services in accordance with Rule 6.1. The Rhode Island Bar Association urges all attorneys, as well as law firms, government and corporate employers to support, endorse and adopt a pro bono policy that will encourage open participation by associates and employees. Be it resolved that in order to implement the above statement of policy, the Bar Association urges each member to join and participate in a volunteer lawyer program of the Rhode Island Bar Association.

Passed by the Rhode Island Bar Association House of Delegates on January 21, 1992.

To do your part, contact the Bar's Public Services Director Susan Fontaine by telephone: **401-421-5740** or email: **sfontaine@ribar.com**.

National *Pro Bono* Week

In honor of the American Bar Association's National *Pro Bono* Week in October, 2015, the Rhode Island Bar Association encouraged all members to participate in one or more of the Bar's *pro bono* programs. President Darigan sent a personal invitation to members asking them to become a volunteer attorney during this week. Additionally, attorney members of the *pro bono* programs volunteered at Ask A Lawyer and legal clinics statewide.

New Initiative to Assist Victims – Partners Overcoming Domestic Violence

The Volunteer Lawyer Program Director was invited to join an Advisory Committee, as part of the VLP program partnering with Rhode Island Legal Services, Roger Williams University School of Law and the Coalition Against Domestic Violence, to actively participate in a domestic violence legal intervention project. The mission of the project is to "facilitate access to high quality, free legal services to empower survivors of domestic violence and advocate for their safety." The Volunteer Lawyer Program has always prioritized placing cases involving domestic violence. By partnering with this project, new volunteer attorneys will be paired, work directly with a seasoned attorney mentor, and receive comprehensive training. The new attorneys will provide a longstanding plan of legal remedies with the support of their active mentors. The three-part, twelve-hour training for this program is scheduled for February, 2016.

Foreclosure Prevention

We continue to receive requests from clients in desperate need of assistance with foreclosures and foreclosure-related matters. Recent statistics from December 2015 reflect an increase in foreclosure rates in the Providence-Warwick metro areas. In 2016, we will continue to focus on volunteer attorney recruitment, expanding and strengthening our legal resources for client assistance, particularly aiming at foreclosure prevention.

Community Appreciation

A sampling of the client evaluations of the legal assistance they received in 2015 demonstrates the amazing dedication of the volunteer attorneys and the sincere appreciation of the clients. These evaluations truly summarize the critical need for expanded and continued private bar involvement to provide individual representation to protect the rights of our poorest citizens. The following are several of the many comments received:

I am so grateful this program exists!

She was very professional.

He was very good at his job. Thank you very much.

I had a great experience. She made a painful process very smooth.

Everything was resolved in a timely fashion. Thank you.

He was polite, respectful and truthful about my case. I appreciated his honesty.

All is fine now. Thank you.

Thank you for the time you took to search for an attorney for my case. I know it wasn't easy. My lawyer was wonderful, caring and treated me with dignity. To take on a volunteer case shows what a wonderful person they are.

How Do I Get Involved?

Please help celebrate the **30th Anniversary of the Bar Association's Volunteer Lawyer Program** by making it part of your practice in 2016 and years to come. We need you!! For information and to join the Volunteer Lawyer Program, please contact Susan Fontaine at: sfontaine@ribar.com or 401-421-7758. For your convenience, VLP membership applications may be accessed on the Bar's website at ribar.com and completed online. Once we receive your application, we will contact you.

The Rhode Island Bar Association's Volunteer Lawyer Program is funded by Rhode Island Legal Services, Inc. and the Rhode Island Bar Foundation. ❖

House of Delegates' Meeting Includes Legislative Update

William A. Farrell, Esq., the Rhode Island Bar Association's liaison to the Rhode Island General Assembly, provided an interesting and informative legislative update at the January, House of Delegates (HOD) meeting presided over by Bar President Melissa E. Darigan, Esq. Other HOD agenda items included reports on Limited Scope Representation and the 2016 Annual Meeting and Bar Committee activities.

Show Me the Money: Quick Tips on Student Loan Law

Amy H. Goins, Esq.
Ursillo, Teitz & Ritch, Ltd.,
Providence

Student loan law is a burgeoning field of legal practice. In 2015, about 71 percent of bachelor's degree recipients graduated with student loans.[1] As the total amount of outstanding educational debt grows ever-larger, both attorneys and financial advisors will likely see an increase in clients needing assistance with their loans. This article is not intended to serve as a comprehensive review of student loan law, but rather provides a brief introduction to several relevant topics for attorneys who are managing their own student loans or advising clients who are in repayment.

This article provides an introduction to several relevant topics for attorneys who are managing their own student loans or advising clients who are in repayment.

Know Your Loans

The most important step a borrower should take at her or his earliest opportunity is to take an inventory of her or his loans, documenting not only how much is owed and to whom, but also the type of loan, monthly payment, repayment term, grace period, interest rate, and other important information. Ideally, a borrower will begin assembling this information while she or he is still in school so that the first post-graduation bill will be less shocking. Federal student loan borrowers can find this information online at the National Student Loan Database.[2] There is no centralized database for private student loans, so borrowers will need to inquire with their loan servicers or check their credit reports for this information. Both federal and private student loans may be transferred from servicer to servicer, so it is important for borrowers to keep track of this information and ensure payments are received and properly credited.

Consolidation

A consolidation loan combines multiple student loans into a single new loan, allowing borrowers to make one monthly payment instead of several. Federal student loan borrowers may wish to consolidate their loans into a federal consolidation loan for convenience and for reduced payments due to an extended repayment period. Most federal loan borrowers will not obtain a lower interest rate by consolidating, as federal consolidation loans carry a fixed interest rate based on the weighted average of the loans being consolidated.

Although the private student loan lending market contracted severely in the immediate aftermath of the recent recession, many private lenders are now offering consolidation loans for both private and federal student loans. For borrowers with loans carrying relatively high interest rates, offers to consolidate at today's lower interest rates may be attractive. Borrowers should carefully compare the terms of their loans with the terms offered by private consolidation loan lenders. Federal student loan borrowers can lose significant benefits by consolidating into a private loan and should consult with an attorney or financial advisor before taking this step.

Choice of Repayment Plans

Having trouble making payments? A variety of repayment plans are available for federal loans. Borrowers may opt for graduated, extended, or several different income-based repayment plans. Coupled with PSLF, income-based repayment plans can result in significant savings. Most recently, in December 2015, the federal government debuted a brand-new repayment plan known as Revised Pay As You Earn (REPAYE). Under this repayment plan, payments are capped at 10 percent of a borrower's discretionary income. The downside to selecting an alternative repayment plan is that it could take much longer for a borrower to satisfy his debt. Whereas the standard repayment period for federal loans is ten years, many income-based repayment plans have a 25 year repayment period. Borrowers should carefully compare the details of the available repayment plans and may wish to consult an attorney or financial advisor for personalized advice on repayment plan selection. Private student loan borrowers generally have fewer options for relief in repayment, but some servicers may offer temporary forbearances and/or alternative repayment plans.

Forbearance

Even after taking advantage of alternative repayment plans, a borrower may find she or he is unable to make required minimum payments.

In this situation, it is critical for a borrower to contact her or his loan servicer as soon as possible. Servicers have an interest in working with borrowers during periods of financial hardship so they are ultimately able to satisfy their obligations. A borrower may qualify for a period of forbearance, during which she or he will not be required to make payments. Again, private student loan borrowers may have fewer options during periods of hardship.

Bankruptcy

Unlike other kinds of debt, student loans generally may not be discharged in bankruptcy unless repayment of the debt "will impose an undue hardship on the debtor and the debtor's dependents."[3] Although it is not impossible for a borrower to discharge her or his debt by filing for bankruptcy, the standard for obtaining such a discharge is quite difficult to satisfy. Most federal courts of appeal have adopted the test set forth in **Brunner v. New York State Higher Education Services Corp.**[4] Under the **Brunner** test, a debtor must show that: 1) based on her or his current income and expenses, she or he cannot maintain a minimal standard of living for her or him and their dependents if forced to repay the student loans; 2) this circumstance is unlikely to change during a significant portion of the loan repayment period; and 3) she or he has made good faith efforts to repay the loans. Some courts require a debtor to establish a "certainty of hopelessness" to satisfy the second prong of this test.[5] Even if a borrower is unable to obtain a total discharge of his student loans by declaring bankruptcy, filing for bankruptcy can help a borrower by providing relief from other debts.

Making Extra Payments/Prepaying

A borrower may find that she or he is able to pay more than her or his required minimum payment from month to month, or at times may have extra cash she or he wishes to put toward debt repayment. Just as with a car loan or mortgage, extra payments should be directed towards principal to accelerate payoff. Loan servicers may not automatically apply extra payments towards principal, so borrowers should include specific instructions along with any overpayments. Prepayment penalties for both federal and private student loans are prohibited under federal law.

Public Service Loan Forgiveness

If the borrower works for a nonprofit organization or government agency, Public Service Loan Forgiveness (PSLF) could result in significant savings. This program debuted in October 2007 and requires a borrower to make 120 payments (the equivalent of ten years of payments) before the remaining loan balance is forgiven. The first wave of borrowers will apply for PSLF in October 2017. Only Federal Direct Loans are eligible for PSLF, so borrowers with other loans such as Perkins Loans or loans from the now-defunct Federal Family Education Loan (FFEL) program must consolidate into a Federal Direct Loan to qualify. Although other loan forgiveness programs limit eligibility to certain professions, such as teaching or nursing, PSLF is not limited to certain types of employment. Borrowers should have their employers complete an employment certification form, available at **studentaid.ed.gov**, for each year of qualifying employment, and are advised to submit these forms annually.

Tax Implications

Many borrowers may claim a tax deduction of up to $2,500 for student loan interest. Unfortunately, this limit is the same for both single and married borrowers. The deduction is not available to married borrowers who file separate tax returns or to borrowers with income over the IRS-specified limits. Additionally, borrowers should be aware that loan forgiveness may result in unfavorable tax consequences. Forgiveness under IBR and other income-based repayment plans is currently considered taxable income, which could spell bad news for borrowers with high debt and low income. However, under current IRS rules, loans forgiven under PSLF are considered non-taxable income. Time will tell whether this favorable tax treatment will change once droves of borrowers begin applying for and receiving forgiveness under this program.

Additional Resources

Borrowers can find answers to many common questions at **studentaid.ed.gov**. Heather Jarvis, an attorney and student loan expert, maintains a helpful website and blog at **askheatherjarvis.com**. Attorneys may wish to consult Student Loan Law, a publication of the National Consumer Law Center.

Rhode Island Bar Foundation

Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve and facilitate the administration of justice. The Foundation receives support from members of the Bar, other foundations, and from honorary and memorial contributions.

Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form, with your contribution to the Rhode Island Bar Foundation.

Help Our Bar Foundation Help Others

RHODE ISLAND BAR FOUNDATION GIFT

PLEASE PRINT

My enclosed gift in the amount of $ _____

Please accept this gift in my name

or

In Memory of _____

or

In Honor of _____

Your Name(s) _____

Address _____

City/State/Zip _____

Phone (in case of questions) _____

Email: _____

Please mail this form and your contribution to:

Rhode Island Bar Foundation

41 Sharpe Drive

Cranston, RI 02920

Questions? Please contact Virginia Caldwell at 421-6541

or gcaldwell@ribar.com

ENDNOTES

1 *Jeffrey Sparshott, Congratulations, Class of 2015. You're the Most Indebted Class Ever (For Now), Wall Street Journal, May 8, 2015, http://blogs.wsj.com/economics/2015/05/08/congratulations-class-of-2015-youre-the-most-indebted-ever-for-now/.*

2 *https://www.nslds.ed.gov/nslds/nslds_SA/.*

3 *11 U.S.C. § 523(a)(8).*

4 ***Brunner v. New York State Higher Education Services Corp.** 831 F.2d 395 (2d Cir. 1987).*

5 *Deanne Loonin & Persis S. Yu, Student Loan Law § 11.4.2.2.3 (5th ed. 2015).* ❖

Broker-Dealer Liability: Are the Rules Pertaining to Providing Investment Advice to Retail Customers About to Change?

Andrew C. Spacone, Esq.
Adler Pollock & Sheehan P.C.
Providence

Nicole M. Verdi, Esq.
Adler Pollock & Sheehan P.C.
Providence

It is likely this new rule will result in significant costs for the brokerage industry, in terms of increased liability and administrative and lost revenues for wealth managers and insurance companies.

Introduction

In the securities industry, broker-dealers[1] play an important and vital role. If the current broker-dealer regulatory environment is not daunting enough already, it is about to get more complicated and costly, from a revenue and liability perspective. The Department of Labor (DOL) appears poised to adopt a rule early next year holding broker-dealers to a fiduciary standard of care when providing investment advice in connection with Employee Retirement Income Security Act (ERISA) plans, and significantly more important from an industry revenue perspective, IRAs.[2] Presently, broker-dealers are not generally considered fiduciaries when they provide investment advice and related services, other than when they have investment discretion over client accounts.[3] Although the courts' characterization of the broker-dealer duty when providing investment advice is hardly uniform,[4] it is often analyzed in terms of whether the recommendation was suitable, which is narrower and less strict than the best interest standard applying to fiduciaries, such as ERISA plan administrators and investment advisors. Thus, all things being equal, if the DOL's rule is enacted, aggrieved investors will have an easier time suing broker-dealers, and the DOL will have enforcement and oversight powers relative to the industry, which it did not previously possess.

In addition to increased liability related costs, there is considerable angst in the industry over whether broker-dealers and their firms will be able to continue many of their current third-party compensation arrangements – e.g., commissions, 12b-1 fees and revenue fees – despite the rule's so-called "best interest contract exemption" (Best Interest Exemption or Exemption) for prohibited transactions. This could have significant financial consequences for many participants in the brokerage industry, especially wealth management companies and insurance companies selling annuity products generating high commissions. Morningstar estimates that by 2020 IRAs alone will likely exceed $10 trillion in assets.[5] Accordingly, many brokerage firms also can expect substantial compliance and monitoring related costs to ensure compliance with the rule, especially the Exemption.

The Securities and Exchange Commission (SEC), responsible for regulating broker-dealers, is actively studying whether broker-dealers providing investment advice to retail investors should be subject to a fiduciary standard across all investment platforms.[6] Presently, the SEC appears to be relatively far behind the DOL in rulemaking. However, there is a good chance in the near future, the SEC will require broker-dealers to adhere to a fiduciary standard, including mandating broker-dealers disclose conflicts of interest, albeit under a less cumbersome structure than required by the DOL rule.

The Financial Industry National Regulatory Agency (FINRA), the quasi-governmental self-regulatory organization which regulates broker-dealers registered with the SEC under the Securities Exchange Act of 1934, is essentially in a holding pattern in terms of its rules and regulations.[7]

The genesis of the DOL's broker-dealer regulatory reform has been led by President Barack Obama.[8] Proponents of this reform believe the suitability standard prompts broker-dealers to recommend bad investments to their retail customers.[9] In other words, current broker-dealer compensation models, not requiring disclosure of conflicts of interest, incentivize broker-dealers to place their interests ahead of their customers' interests.[10] According to President Obama's administration, IRA holders lose an aggregate $17 billion annually resulting from this conflicted investment advice.[11] The DOL estimates the proposed rule will save retirees between $88 billion and $100 billion over 20 years.[12] The impetus for this reform is reflective of a worldwide movement to protect retail investors[13] in response to the Great Recession of 2008 and its fallout.

Based on the foregoing, it is not surprising the brokerage industry, and the lawyers who service it, are keenly interested in the DOL rule and related activity. The dilemma they face is what to do about the changing landscape given the uncertainty of the requirements. It is not the

purpose of this article to debate the merits of the DOL rule or the direction in which the SEC may be headed. Despite the regulatory uncertainty, it is reasonable to assume broker-dealers will soon be subject to a stricter standard of care at the federal level, at least relative to ERISA plan participants and IRA owners. Accordingly, it appears the DOL rule will have important liability and significant cost and revenue implications for the brokerage industry. Therefore, the purpose of this article is to discuss the *highlights* of the DOL rule and related developments.[14] Although the DOL rule probably will not be enacted and effective until at least a year, and its exact parameters are somewhat uncertain, prudent broker-dealers and their legal counsel would be wise to start planning for the change now.

Background

It is useful to briefly summarize the difference between the standard of care for investment advisors[15] and broker-dealers because this distinction lies at the center of the regulatory debate. Investment advisors, which are regulated at the federal level under the Investment Advisors Act of 1940 (Act), are generally subject to the best interest of the client standard of care which is the highest form of duty.[16] This federal standard is uniformly adopted by federal and state courts for investment advisors.[17] This standard holds investment advisors to a duty of care and duty of loyalty and employs a prudent person standard.[18] The duty of loyalty, at the heart of the reform movement, requires investment advisors to put their clients' interests ahead of their own. This includes the obligation to disclose all conflicts of interest. The duty of care encompasses such matters as aligning the customer's investment and financial needs with investment recommendations, as well as overall account management. Thus, recommending a high risk investment that does not comport with the customer's investment objections, most likely would be a breach of the duty of care. The fiduciary standard under ERISA essentially reflects the common law understanding of the term.[19]

Broker-dealers generally are subject to the lesser suitability standard when providing investment advice to retail investors, absent exigent circumstances such as the customer placing special trust in the broker-dealer which is acknowl-

edged or the customer providing the broker-dealer with discretionary account responsibility.[20] Importantly, unlike fiduciaries, broker-dealers, under the suitability standard of care, are not obligated to disclose any third-party payment arrangements as part of the overall investment advice.[21] High commissions or failure to disclose conflicts may be a basis for liability under the suitability standard, depending on the facts and circumstances, but neither is necessarily dispositive. Generally speaking, absent exigent circumstances, aggrieved retail investors need to prove gross negligence or fraud on the part of their brokers to recover losses.

FINRA has institutionalized the suitability standard as part of its disciplinary and arbitration procedures. This is important because a majority of individual broker-dealer disputes that are adjudicated result in FINRA arbitration.[22] FINRA Rule 2111 requires that broker-dealers have a reasonable basis to believe the recommended investment advice is suitable for the client.[23] Rule 2090 requires that the broker-dealers know their clients.[24] Taken together, these two rules provide an analytical framework similar to the fiduciary standard under ERISA, with one major exception: conflict disclosures are not mandated.[25]

Meanwhile, the SEC appears to adhere to a reasonableness standard falling somewhere between suitability and the best interest standard.[26] In the years subsequent to the passage of the Act, the broker-dealer profession has greatly expanded its investment advice beyond the mere incidental advice and now includes full service investment advice, including, in many cases, retirement and even financial planning advice. In effect, broker-dealers often look and act like investment advisors, which is precisely what the proponents of the DOL's reform object to. No corresponding changes have been made to the federal regulatory regime to accommodate this development, which has not gone unnoticed by the SEC.[27] In short, the reformers seek to close this gap.

DOL Proposed Rule – Establishing a Fiduciary Standard of Care

The DOL proposed rule consists of three amendments to the Code of Federal Regulations (CFR).[28] For simplicity's sake, we will address them as one rule. The first part of the rule takes a functional

Bar CLE, *Evictions of Tenants and Prior Owners*, Draws Large Attendance

Over 50 attorneys attended *Evictions of Tenants and Prior Owners*, a January 28th Food For Thought CLE program at the Bar's classroom in Cranston. Seminar Speaker Brian M. Kiser, Esq., of the Marinosci Law Group, discussed the proper procedure to follow in eviction actions, governing statutory and case law, and how recent legislative changes have drastically altered the rights afforded to both tenants and prior owners of foreclosed properties.

approach to determining when a person is providing investment advice.[29] The rule begins by asking whether a person is recommending investment advice for a fee or other compensation, directly or indirectly, basically addressing fee arrangements of any type.[30] The rule identifies four categories of activity constituting investment advice.[31] Providing advice concerning a customer's sale, purchase or holding of an investment vehicle fits under the definition, as well as providing advice relative to ERISA distributions or rollovers.[32] Customer directed trading transactions are not considered investment advice under the rule.[33]

The definition of recommendation is more problematic. According to the DOL, it is an objective inquiry into whether a communication, based on its content, context and presentation, would *reasonably be viewed as a suggestion* that the advice recipient engage in or refrain from taking a particular course of action.[34] Obviously, this is an incredibly broad definition, the contours of which remain to be worked out subsequent to adoption of the final rule, unless the DOL tightens the definition before the final rule adoption.

The rule then sets out certain actions which would render such a person a fiduciary.[35] The first action is straightforward: when a person providing investment advice represents or acknowledges that he or she is a fiduciary.[36] For obvious reasons, most broker-dealers tend to shy away from any such representation or acknowledgment. The alternative activity sweeps more broadly. Specifically, an advisor is a fiduciary if he or she:

> Renders the advice pursuant to a written or verbal agreement, arrangement or *understanding* that the advice *is individualized to, or that such advice is specifically* directed to, the advice recipient for consideration in making investment or management decisions with respect to securities or other property of the plan or IRA.[37]

This encompasses most typical broker-dealer customer relationships. Thus, once satisfied, any broker-dealer who provides investment advice to plan participants or IRA owners, among others, is now a fiduciary (Investment Advisor Fiduciary) under ERISA, and the suitability standard is replaced with ERISA's fiduciary standard. More importantly, once the broker-dealer is subject to ERISA and the IRS rules governing IRAs, he or she may not

engage in prohibited transactions, e.g. payments which could result in a conflict of interest.[38]

Recognizing the realities of the market place,[39] the DOL has inserted a number of carve outs for transactions that normally are not considered fiduciary investment advice.[40] These carve outs include a Seller carve out which addresses financial sophisticated plan fiduciaries and an Investment Education carve out which runs the gamut of traditional financial planning and analysis and related services provided by broker-dealers.[41] A theme covering most of the carve outs is avoidance of individualized and specialized investment advice.[42] While some of these carve outs are not controversial, others, such as the Investment Education carve out and § (b)(6)(ii) titled "General financial, investment and retirement information" are highly nuanced and will require close monitoring to ensure compliance.[43]

The rule appears to permit broker-dealers to engage in flat fee arrangements, eliminating most, if not all, conflict of interest concerns without resorting to the Best Interest Exemption. However, this does not relieve the advisor of his or her fiduciary duties.[44] This is important because many commentators who have addressed the rule focus mostly on the problems associated with the Best Interest Exemption because it will have the greatest impact on revenues.[45] The DOL concluded that even absent a conflict of interest arising from a compensation model, broker-dealers providing investment advice to plan participants and IRA holders must still adhere to a heightened standard of care.[46] The heightened standard of care requires broker-dealers to actively monitor customer accounts, increase communications and increase due diligence concerning the customer's financial condition and investment needs. Further, the heightened standard of care requires broker-dealers to be cautious when investing in high-risk investments, such as hedge funds, as fiduciaries must comply with ERISA. Increasingly over the year, class action lawsuits were filed under ERISA against plan administrators for investing client monies in high-risk investments. Presumably, under the rule, broker-dealers would be subject to similar litigation depending on their advice.

In sum, from a liability perspective,

continued on page 28

Coastline EAP and the Lawyers Helping Lawyers Committee – Confidential Help When You Are In Need

The Rhode Island Bar Association's Lawyers Helping Lawyers Committee wishes to remind you that one of the most valuable benefits Bar Association members enjoy is unlimited access to the professional services offered by Coastline EAP. For many years, Judith Hoffman has been Coastline EAP's liaison to the Rhode Island Bar. She and her colleagues are available 24/7 to provide lawyers and family members with ***confidential*** crisis support, consultation, resources, and follow-up.

Coastline EAP also offers no-cost webinars on *Stress Management, The Power of Positive Thinking, Balancing Work and Family, and Time Management*. The webinars can be viewed at your convenience, online, at **coastlineeap.com**. There is no need to register. Simply click on the "Webinars" button and choose from among the choices listed by clicking on the title. The webinar will begin automatically. To contact Judy or one of her colleagues, ***confidentially***, telephone: 1-800-445-1195 or (401) 732-9444.

SOLACE

Helping Bar Members in Times of Need

SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE communications are through voluntary participation in an email-based network through which Bar members may ask for help, or volunteer to assist others, with medical or other matters.

Issues addressed through SOLACE may range from a need for information about, and assistance with, major medical problems, to recovery from an office fire and from the need for temporary professional space, to help for an out-of-state family member.

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

To sign-up for SOLACE, please go to the Bar's website at **www.ribar.com**, login to the **Members Only** section, scroll down the menu, click on the **SOLACE Program Sign-Up**, and follow the prompts. Signing up includes your name and email address on the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your colleagues. And, the SOLACE email list also keeps you informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away. If you need help, or know another Bar member who does, please contact Executive Director Helen McDonald at hmcdonald@ribar.com or 401.421.5740.

Do you or your family need help with any personal challenges?

We provide free, confidential assistance to Bar members and their families.

Confidential and free help, information, assessment and referral for personal challenges are available **now** for Rhode Island Bar Association members and their families. This no-cost assistance is available through the Bar's contract with **Coastline Employee Assistance Program (EAP)** and through the members of the Bar Association's Lawyers Helping Lawyers (LHL) Committee. To discuss your concerns, or those you may have about a colleague, you may contact a LHL member, or go directly to professionals at Coastline EAP who provide confidential consultation for a wide range of personal concerns including but not limited to: balancing work and family, depression, anxiety, domestic violence, childcare, eldercare, grief, career satisfaction, alcohol and substance abuse, and problem gambling.

When contacting Coastline EAP, please identify yourself as a Rhode Island Bar Association member or family member. A Coastline EAP Consultant will briefly discuss your concerns to determine if your situation needs immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you. Or, visit our website at www.coastlineeap.com (company name login is "RIBAR"). Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

Lawyers Helping Lawyers Committee members choose this volunteer assignment because they understand the issues and want to help you find answers and appropriate courses of action. Committee members listen to your concerns, share their experiences, offer advice and support, and keep all information completely confidential.

Please contact us for strictly confidential, free, peer and professional assistance with any personal challenges.

Brian Adae, Esq.	831-3150
Neville J. Bedford, Esq.	348-6723
David M. Campanella, Esq.	273-0200
Susan Leach DeBlasio	274-7200
Sonja L. Deyoe, Esq.	864-3244
Christy B. Durant, Esq.	272-5300
Brian D. Fogarty, Esq.	821-9945
Nicholas Trott Long, Esq. (Chairperson)	351-5070
Genevieve M. Martin, Esq.	274-4400
Joseph R. Miller, Esq.	454-5000
Henry S. Monti, Esq.	467-2300
Roger C. Ross, Esq.	723-1122
Adrienne G. Southgate, Esq.	301-7823
Judith G. Hoffman, LICSW, CEAP, Coastline EAP	732-9444 or 800-445-1195

Lawyers Helping Lawyers Committee Members Protect Your Privacy

Act Now Before Two Social Security Strategies Are Eliminated

Marc J. Soss, Esq.
Licensed in Florida,
Connecticut & Rhode Island

The federal budget agreement, signed into law on November 2, 2015, will eliminate two Social Security strategies which had been utilized by spouses to maximize lifetime benefits. The strategies will be eliminated effective on April 30, 2016. The elimination of these strategies may now require social security beneficiaries to act before the impending changes take effect or reconsider their retirement plans.

Under the current Social Security's rules, the spouse of a working spouse cannot claim a spousal benefit unless the working spouse has applied for Social Security benefits. However, a working spouse is able to file for Social Security benefits at their full retirement age (today that is 66) and then suspend the benefits. This strategy allowed the spouse to begin receiving spousal benefits while the working spouse postponed the receipt of their benefits. The longer the working spouse delayed receipt of their benefits, the more retirement credits they were able to accumulate (up to age 70), the result being a larger Social Security check.

Under the new law, a spouse cannot begin receiving benefits until the working spouse actually receives benefits. A working spouse can still file and then suspend social security benefits, but their spouses (or other dependents, including minor and disabled children) cannot receive benefits during the suspension. This eliminates the use of the suspension strategy for the working spouse who also wants their spouse to receive benefits immediately. The new law will not impact working spouses who have already filed and suspended their benefits. A working spouse, who is currently 66 or will turn 66 before the effective date of the law, may still utilize the file and suspend strategy in order to trigger benefits for their spouse.

Under the current Social Security's rules, the spouse of a working spouse cannot claim a spousal benefit unless the working spouse has applied for Social Security benefits.

In addition, the new law revises the rule that allows a spouse, who takes benefits at full retirement age, to elect whether to take spousal benefits or benefits on his or her own record. This strategy allowed a higher-earning spouse to claim a spousal benefit at full retirement age. Then at age 70, the higher-earning spouse would claim the maximum amount of his or her retirement benefit and stop receiving the spousal benefit. Individuals, age 62 or older by the end of 2015, will still be able to elect which benefit they want at their full retirement age.

However, under the new law, when a working spouse who is not age 62 by the end of 2015 applies for spousal benefits, the Social Security administration will assume it is also an application for benefits on the working spouse's record. The working spouse is eligible for the higher benefit, but they can't elect to take just their spouse's benefits and allow their own benefits to continue accruing until age 70. This new rule will not apply to survivor's benefits. A surviving spouse will still be able to choose to take survivor's benefits first and then switch to retirement benefits later if the retirement benefit is larger. ❖

Technology Lawyers Helping Technology Companies Grow Their Portfolios

Patentability Opinions

US and International Patent Prosecution

Patent Infringement Opinions

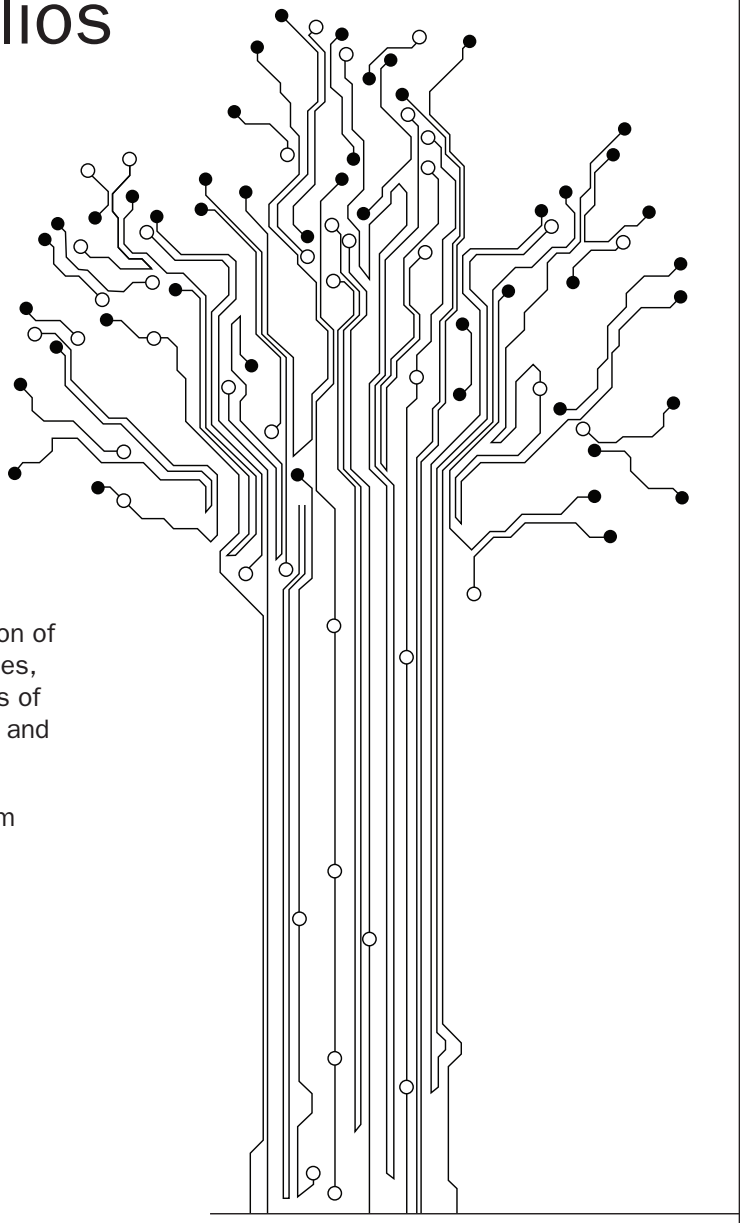
Trademark Clearance Opinions

US and International Trademark Prosecution

Intellectual Property Due Diligence

Intellectual Property Licensing

Intellectual Property Audits



From complex patent prosecution to the selection of a new trademark, to internet domain name issues, Barlow, Josephs & Holmes has helped hundreds of companies across New England identify, exploit and protect their intellectual property.

Barlow, Josephs & Holmes is a personalized firm that caters to the needs of growing technology businesses. We understand the need for quick response and no-nonsense answers.

For more information, call Steve Holmes or David Josephs at 401.273.4446.

BJH

Barlow, Josephs & Holmes, Ltd.

PATENT, TRADEMARK AND COPYRIGHT LAW | EST 1857

101 DYER STREET
5TH FLOOR
PROVIDENCE, RI 02903
401.273.4446 TEL
401.273.4447 FAX
WWW.BARJOS.COM

All attorneys of the firm Barlow, Josephs & Holmes, Ltd. are admitted to practice as Patent Attorneys before the United States Patent and Trademark Office.

The Rhode Island Supreme Court licenses all lawyers in the general practice of Law. The Court does not license or certify any lawyers as an expert or specialist in any field of practice.

HONOR ROLL

Volunteers Serving Rhode Islanders' Legal Needs

The Rhode Island Bar Association applauds the following attorneys for their outstanding *pro bono* service through the Bar's Volunteer Lawyer Program, Elderly Pro Bono Program, and the US Armed Forces Legal Services Project during December 2015 and January 2016.

DECEMBER 2015

Volunteer Lawyer Program

R. Andrew Pelletier, Esq., *Pelletier Law Group*
Michael A. Castner, Esq., *Jamestown*
Elisha L. Morris, Esq., *Providence*
Joanne C. D'Ambra, Esq., *Cranston*
Richard F. Daley, Esq., *Law Office of Richard F. Daley*
Neville J. Bedford, Esq., *Providence*
Michael D. Coleman, Esq., *Schreiber & Schreiber*
Tiffinay Antoch Emery, Esq., *Law Offices of Tiffinay Antoch Emery*
Kevin F. Dwyer, Esq., *Broadway Law*
Nancy R. Neis, Esq., *Bazar & Grasso, P.C.*
Phillip C. Koutsogiane, Esq., *Law Offices of Phillip Koutsogiane*
John M. Roney, Esq., *Roney & Labinger LLP*
John S. Simonian, Esq., *Providence*
Jack D. Pitts, Esq., *Pitts & Burns*
John T. Longo, Esq., *Citadel Consumer Litigation, P.C.*
James P. Creighton, Esq., *Johnston*
Adam J. Rose, Esq., *North Providence*
Christine J. Engustian, Esq., *Law Offices of Christine J. Engustian, Esq.*
Jennifer M. Reynolds, Esq., *The Law Office of Jeremy Howe*
Stephen M. Miller, Esq., *Providence*
Emily J. Murphy, Esq., *Morneau & Murphy*
Kimberly Ann Page, Esq., *North Kingstown*
Mark S. Buckley, Esq., *East Greenwich*
Charles A. Pisaturo, Jr., Esq., *Providence*
David B. Hathaway, Esq., *Law Offices of David Hathaway*

Elderly Pro Bono Program

Ginger B. Kelly, Esq., *The Law Offices of Ginger B. Kelly*
Susan D. Vani, Esq., *Providence*
Elizabeth Peterson Santilli, Esq., *Asquith & Mahoney, PC*
Charles T. Knowles, Esq., *Wickford*
Phillip C. Koutsogiane, Esq., *Law Offices of Phillip Koutsogiane*
Frederic A. Marzilli, Esq., *Marzilli Law Offices*
Vincent J. Montecalvo, Esq., *Law Offices of Vincent J. Montecalvo*
Charles A. Pisaturo, Jr., Esq., *Providence*
Steven J. Boyajian, Esq., *Robinson & Cole, LLP*
John Cappello, Esq., *Lincoln*
Joseph M. Proietta, Esq., *Providence*
Richard P. D'Addario, Esq., *Law Offices of Richard P. D'Addario*
Steven H. Surdut, Esq., *Law Office of George A. Comoli*

US Armed Forces Legal Services Project

Peter P. D'Amico, Esq., *Peter P. D'Amico & Associates*
Bethany M. Whitmarsh, Esq., *LeClairRyan*
Matthew J. Leonard, Esq., *Salter McGowan Sylvia & Leonard, Inc.*
Michael S. Pezzullo, Esq., *Warwick*
Priscilla Facha DiMaio, Esq., *Providence*
Lori J. Norris, Esq., *Law Office of Lori J. Norris*
Eric P.W. Hall, Esq., *Providence*

JANUARY 2016

Volunteer Lawyer Program

John T. Longo, Esq., *Citadel Consumer Litigation, P.C.*
Joshua R. Karns, Esq., *Karns Law Group*
James P. Creighton, Esq., *Johnston*
Joshua R. Caswell, Esq., *Howland Evangelista Kohlenberg Burnett LLP*
Matthew R. Reilly, Esq., *Cranston*
Jack D. Pitts, Esq., *Johnston*
John M. Roney, Esq., *Roney & Labinger LLP*
Michael A. Castner, Esq., *Jamestown*
Michelle D. Baker, Esq., *Michelle D. Baker, Ltd.*
Peter C. Tashjian, Esq., *Tiverton*
William J. Conley, Esq., *Law Offices of William J. Conley, Jr.*
Eileen C. O'Shaughnessy, Esq., *Marinosci Law Group, P.C.*
Richard F. Daley, Esq., *Law Office of Richard F. Daley*
Frederick A. Costello, Esq., *Warwick*
Joanne C. D'Ambra, Esq., *Cranston*
Christine Marinello, Esq., *Law Office of Christine Marinello*
Richard A. DeMerchant, Esq., *Heitke Law Office, LLC*
Richard K. Foster, Esq., *Coventry*

Elderly Pro Bono Program

Robert J. Ameen, Esq., *Law Office of Robert J. Ameen, Esq.*
Jane F. Howlett, Esq., *Bristol*
Shelley G. Prebenda, Esq., *Law Office of Shelley G. Prebenda*
John A. Beretta, Esq., *Law Office of John A. Beretta*
Stephen G. Linder, Esq., *Law Office of Stephen G. Linder*
Jack D. Pitts, Esq., *Pitts & Burns*
John Cappello, Esq., *Lincoln*
Michael J. Furtado, Esq., *Cranston*
Corey J. Allard, Esq., *Providence*

US Armed Forces Legal Services Project

Priscilla Facha DiMaio, Esq., *Providence*
Peter P. D'Amico, Esq., *Peter P. D'Amico & Associates*

The Bar also thanks the following volunteers for their valuable participation in Senior Center events during December 2015 and January of 2016.

Ask A Lawyer

Kermin Liu, Esq., *Law Office of Kermin Liu*

Legal Clinic

Brian G. Goldstein, Esq., *Law Offices of Brian G. Goldstein*
Denneese C. Seale, Esq., *Woonsocket*

For information and to join a Bar *pro bono* program, please contact the Bar's **Public Services Director Susan Fontaine** at: **sfontaine@ribar.com** or **401-421-7758**. For your convenience, Public Services program applications may be accessed on the Bar's website at **ribar.com** and completed online.

CLE Publications Order Form

NAME

FIRM or AGENCY

MAILING ADDRESS *(Cannot be a P.O. Box)*

CITY & STATE

ZIP PHONE

EMAIL ADDRESS

BAR ID #

☐ Check enclosed (made payable to RIBA/CLE)
Please do not staple checks.

☐ MasterCard ☐ VISA ☐ AMEX ☐ Discover

Exp. Date _____

Card No. _____

Signature _____

Mail entire page to: CLE Publications
Rhode Island Bar Association
41 Sharpe Drive
Cranston, RI 02920

OFFICE USE ONLY

Check No. _____

Date Rec'd _____

Amount _____

Date Sent _____

Title	Book #	Price	*Choose* Book	USB	Qty.	Total
Business						
Commercial Law 2015: Update on Recent Developments	CL-15	$40				
Creditors/Debtors						
Collections Practice in RI	13-04	$35				
Avoiding Foreclosure/Loan Modifications	10-14	$28				
Family Law						
Equitable Distribution in Divorce	14-03	$35				
QDRO Practice in RI from A-Z	09-13	$40				
Law Practice Management						
Billing Clients	13-02	$25				
Planning Ahead	09-14	$39.95				
Practical Skills						
Criminal Law Practice in RI	14-05	$55				
Workers' Compensation Practice in Rhode Island	12-11	$45				
Planning for and Administering an Estate	12-09	$45				
Residential Closings	12-07	$70				
Domestic Relations Practice	12-06	$70				
Civil Practice in Superior Court	12-03	$45				
Basic Commercial & Real Estate Loan Documentation	12-02	$70				
Civil Practice in District Court	12-01	$45				
Organizing a Rhode Island Business	11-18	$55				
Probate/Elder Law						
Portability	13-05	$35				
Administrative Local Rules	PR-13	$65				
Real Estate						
RI Real Estate Liens: A Field Guide	14-02	$20				
The Ins & Outs of Landlord Tenant Law	11-11	$15				
NEW! RI Title Standards Handbook	TS-16	$35				
Trial Practice						
The Changing Science & Technology of DUI Cases	15-01	$35				
Civil Law Practice: The Basics	14-06	$35				
Auto Accident Reconstruction	13-01	$35				
Recent Developments in the Law 2015	RD-15	$55				
Model Civil Jury Instructions	03-02	$49.95				
RI Law of Workers' Compensation	WC-12	$40				

Publication Total	Shipping and Handling Cost
Up to $45	$6
$45.01 - $75	$9
$75.01 - $100	$12
$100.01+	$15

Please allow 2-3 weeks for delivery. All books are sent by FedEx Ground.

Books $ _____

Shipping/Handling $ _____

Sub-Total $ _____

7% R.I. Sales Tax $ _____

Total $ _____

Detach Here

RI Bar Association Continuing Legal Education Seminars

Register online at the Bar's website www.ribar.com and click on CONTINUING LEGAL EDUCATION on the left side menu or telephone 401-421-5740. All dates and times are subject to change.

March 3
Thursday
Food for Thought
Hardship Licenses & Interlock Devices
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit

March 8
Tuesday
Food for Thought
Hardship Licenses & Interlock Devices
Phil's Main Street Grille, Wakefield
12:45 p.m. – 1:45 p.m., 1.0 credit

March 10
Thursday
A Sidebar with the Superior Court
RI Law Center, Cranston
1:00 p.m. – 4:00 p.m., 3.0 credits
Lunch with the judges starts at 12:30 p.m.
Also available as a ***LIVE WEBCAST***

March 15
Tuesday
Employment Law Risk Reduction for Companies (and How Plaintiffs' Counsel Can Spot HR Violations)
RI Law Center, Cranston
12:00 p.m – 2:00 p.m., 2.0 credits

March 17
Thursday
Food for Thought – Opinion Letters
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a ***LIVE WEBCAST***

March 31
Thursday
Privacy and Data Breaches
RI Law Center, Cranston
4:00 p.m. – 6:00 p.m.
1.0 credits + 1.0 ethics

April 7
Thursday
Food for Thought – Important Aspects of Medical Malpractice Litigation
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit

April 12
Tuesday
Civil Law Practice in Rhode Island – The Basics: Opening a File
RI Law Center, Cranston
2:00 p.m. – 4:00 p.m., 2.0 credit

April 13
Wednesday
Food for Thought – Important Aspects of Medical Malpractice Litigation
Holiday Inn Express, Middletown
12:45 p.m. – 1:45 p.m., 1.0 credit

April 14
Thursday
Food for Thought – As if it Never Happened – Expunging Criminal Records
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a ***LIVE WEBCAST***

Times and dates subject to change.
For updated information go to ribar.com

NOTE: You must register on-line for live webcasts.

The Rhode Island Law Center is now located at
41 Sharpe Drive in Cranston, Rhode Island.
Continuing Legal Education Telephone: 401-421-5740.

— SAVE THE DATE —

2016 Annual Meeting
June 16 & 17, 2016
RI Convention Center, Providence

Reminder: Bar members may complete three credits through participation in online, on demand CLE seminars. To register for an online seminar, go to the Bar's website: **ribar.com** and click on CONTINUING LEGAL EDUCATION on the left side menu.

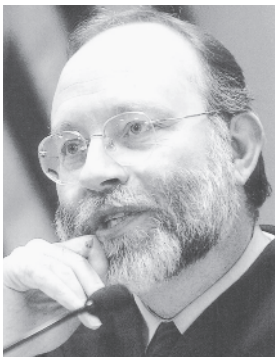
Rhode Island Bar Journal Issues & Articles Available Online

Get free and open access to complete *Bar Journal* issues, from July/August 2009 to the most recent, in a downloadable pdf format, through the Bar website ribar.com **Home** page, clicking on the blue **Bar Journal** icon on the lower left, scrolling down and clicking on **Bar Journal Archive: July/August 2009-Present**. And, Bar members may view and download past *Bar Journal* articles from 2002 through the present through **Casemaker** via the **Members Only** area, by scrolling to the bottom of the page to the **Casemaker** logo, **Click to Enter**, scrolling down and clicking on **Rhode Island Library**, scrolling down to the **Rhode Island Bar Journal** bar and clicking on the **Browse** button. Once there, use the **Table of Contents** to access a specific issue, or scroll down the page to find articles listed by issue under volume number, issue date and page, article title, and author.

BOOK REVIEW

The Most Dangerous Book: The Battle for James Joyce's Ulysses

by Kevin Birmingham



Ernest G. Mayo, Esq.
Warren Municipal Court Judge
Johnson & Wales University
Professor

"Censoring a book is easy…Even a book like *Ulysses*, a book we consider essential to our cultural heritage, might never have happened, might have ended in a New York police court or with the outbreak of a world war, if it were not for a handful of awestruck people."[1]

The legacy of construing the language of American obscenity law was fostered, in no small part, by James Joyce and his sympathetic cohort of literary modernists, social activists, and legal progressives. The cast of characters is colorful and vast, including the writers T. S. Elliot, William Faulkner, Ernest Hemingway, D. H. Lawrence, Ezra Pound, and Virginia Woof; the publisher risk-takers Margaret Anderson, Sylvia Beach, Jane Heap, and Bennett Cerf; the reasoned jurists Learned Hand and John Woolsey; and the pragmatic lawyer John Quinn.

Ulysses is a massive tome unlike any other prior literary work, replete with frank, some would argue rude and vulgar, language and descriptions of the profane realities of human experience both physical and cerebral. In the estimation of the self-appointed guardians of moral rectitude, the English speaking world needed to be shielded from this depravity so America and England banned its importation, publishing, and sale. This conflict, from the 1906 genesis of *Ulysses* to its 1934 American courtroom victory, is meritoriously told in Birmingham's *The Most Dangerous Book: The Battle for James Joyce's Ulysses*.

In the estimation of the self-appointed guardians of moral rectitude, the English speaking world needed to be shielded from this depravity, so America and England banned its importation, publishing, and sale.

Birmingham's biography of *Ulysses* examines Joyce's quarter-century physical, psychological, economic, political and legal struggles to actualize the novel. The reader is reminded of the literary, social and political history of the early decades of the twentieth century; the then percolating issues of anarchism and socialism, artistic traditionalism and modernism, as well as unrestrained French artistic expression and corseted Anglo-American artistic restraint.

In 1873, President Grant signed the Comstock Act into law. It criminalized any "obscene, lewd, or lascivious book, pamphlet, picture, paper, print or other publication of an indecent character."[2] During the first nine months following Anthony Comstock's appointment as a special agent of the United States Post Office Department to investigate violations of the eponymous federal legislation, he prosecuted fifty-five cases.[3] Agent Comstock, also the founder of the New York Society for the Suppression of Vice (NYSSV), zealously pursued his anti-obscenity crusade for four decades. In 1915, he was succeeded by John Sumner as head of the NYSSV and it was Sumner who was poised to protect America from the corrosive potential of Joyce's *Ulysses*.

The righteous guardians of virtue eventually lost the *Ulysses* crusade when fair-minded and well-read Federal District Court Judge John Woosley ruled that Joyce's novel was not obscene as such was defined by applicable legislation,[4] but, in fact:

> 'Ulysses' is an amazing tour de force when one considers the success which has been in the main achieved with such a difficult objective as Joyce set for himself. As I have stated, 'Ulysses' is not an easy book to read. It is brilliant and dull, intelligible and obscure, by turns. In many places it seems to me to be disgusting, but although it contains, as I have mentioned above, many words usually considered dirty, I have not found anything that I consider to be dirt for dirt's sake. Each word of the book contributes like a bit of mosaic to the detail of the picture which Joyce is seeking to construct for his readers.[5]

While Woolsey's decision ended the *Ulysses* legal journey, it did not resolve the 1st Amendment obscenity issue – a workable definition remained forty years away. Nonetheless, the struggle to deliver *Ulysses* to the public without government interference culminating in the Woolsey decision did contribute to the rejection of the hind-bound common law principles of **Regina v. Hicklin**.[6]

The **Hicklin** "standard of obscenity allowed material to be judged merely by the effect of an isolated excerpt upon particularly susceptible persons," **Roth v. United States**.[7] **Roth**, while confirming that obscenity is not protected 1st Amendment speech, rejected **Hicklin** and bor-

rowed from Judge Woolsey in ruling that the standard for obscenity is, "whether, to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest."[8] What ensued was a decade and a half of confused interpretation and application of the **Roth** standard, as well as **Roth**'s subsequent modification by **Memoirs v. Massachusetts**,[9] rejecting the "utterly without redeeming social value" element. Finally, the Supreme Court in **Miller v. California**,[10] provided a more workable and still extant standard which has, in part, reduced the opportunity for the zealotry of unwarranted censorship.[11]

Birmingham appropriately cautions us that his "… biography of *Ulysses* revisits a time when novelists tested the limits of the law and when novels were dangerous enough to be burned. You do not worry about your words being banned partly because of what happened to *Ulysses*."[12] Well written, engaging and informative, Birmingham's *The Most Dangerous Book* is meticulously documented with endnotes, an ample bibliography, and extensive index. Yet, in spite of the depth and breadth of the scholarship, this is a book to enjoy, perhaps, some would opine, more so than *Ulysses*, a book to be read if for no other reason than it is a compelling story well told.

ENDNOTES

1 *Birmingham, 342.*
2 ***Ibid.** 5.*
3 ***Ibid.** 113.*
4 *Section 305 of the Tariff Act of 1930, Title 19 United States Code, Sec. 1305(19 USCA § 1305).*
5 ***United States v. One Book Called 'Ulysses,'** 5 F.Supp. 182, 184 (S.D.N.Y. 1933); affirmed **United States v. One Book Entitled Ulysses by James Joyce**, 72 F.2d 705 (2nd Cir. 1934).*
6 ***Regina v. Hicklin**, L. R. 3 Q. B. 360 (1868).*
7 ***Roth v. United States**, 354 U.S. 476, 488-489 (1957).*
8 ***Id.** at 489.*
9 ***Memoirs v. Massachusetts**, 383 U.S. 423 (1966).*
10 ***Miller v. California**, 413 U.S. 15 (1973).*
11 *The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest,… (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. We do not adopt as a constitutional standard the "utterly without redeeming social value" test of **Memoirs v. Massachusetts**,… **Miller v. California**, 413 U.S. 15, 24.*

*In the four decades since **Miller** and Rhode*

Island's adoption of a conforming statute, the Rhode Island Supreme Court has decided only six cases citing ***Miller****. See R.I. Gen. Law 11-31-1 et seq. and* ***State v. Authelet****, 385 A.2d 642, 120 R.I. 42 (R.I. 1978);* ***D & J Enterprises, Inc. v. Michaelson****, 401 A.2d 440, 121 R.I. 537 (R.I. 1979);* ***State v. Lesieure****, 404 A.2d 457, 121 R.I. 859 (R.I. 1979);* ***State v. Tavarozzi****, 446 A.2d 1048 (R.I. 1982);* ***DeFilippo v. National Broadcasting Co., Inc.****, 446 A.2d 1036 (R.I. 1982); and* ***State v. Tavone****, 482 A.2d 693 (R.I. 1984). Accessed and compiled via ribar.com Casemaker database search of August 31, 2015.*
12 *Birmingham, 15.* ❖

The Justinian Law Society of Rhode Island presented the Society's *Pro Bono Publico* Award

to Laura A. Pisaturo, Esq. The *Pro Bono Publico* Award recognizes the outstanding efforts of members who devote their time and legal talent, *pro bono*, to individual clients, or otherwise undertake work to advance the law for the public good.

DCRI Food Drive

Defense Counsel of Rhode Island (DCRI) President John F. Kelleher with the food collected by DCRI members and donated, with contributions, to the Rhode Island Community Food Bank. Kelleher noted, "This is the sixth time our association has collected food at the holiday season. We had great support from our members, and I am pleased we could be of assistance to the food bank and the families they serve."

Broker-Dealer Liability

continued from page 17

broker-dealers and their firms will be judged by a stricter and broader standard once they meet the criteria of an investment advisor, although the exact contours of this standard will be worked out after the rule is adopted. This, in itself, is unsettling from the industry's perspective. In any event, the fiduciary standard will result in some quantum of new direct and indirect costs such as increased monitoring, training and compliance programs, not to mention legal related costs, especially if class action litigation becomes an attractive option.

Best Interest Exemption

As Fiduciary Investment Advisors, for purposes of ERISA plans and IRAs, broker-dealers may not engage in prohibited transactions, which basically entail third-party payment arrangements such as commissions, Rule 12b-1 fees and the like. Recognizing the realities of the marketplace, the DOL concluded broker-dealers and others should be permitted to pursue more traditional compensation models that are otherwise prohibited transactions under the first half of the new rule.[47]

The Exemption requires, as a condition precedent, that the broker-dealer enter into a written contract with the customer wherein the broker-dealer agrees: 1) to be a fiduciary acting in the client's best interest; 2) to warrant he or she will comply with relevant federal and state laws relating to providing investment advice; 3) to disclose all potential conflicts of interest among other information, which must be repeated annually; 4) to receive no more than reasonable compensation for services provided; and 5) to create a webpage with updated compensation information.[48] Additionally, the Exemption requires the broker-dealer or their financial firms to warrant that policies and procedures are designed to mitigate the impact of material conflicts of interest.[49] If this is not confusing enough, the DOL states the provision incorporates the so-called implied conduct standards principle, which, along with some of the other conditions, arguably makes the Exemption virtually illusory.[50] The rule appears to require that the broker-dealer prohibit compensation practices encouraging broker-dealers to make recommendations not in the best interest of their

clients.[51] Exactly how broker-dealers are to go about determining when a third-party payment arrangement is not in the best interest of the customer remains a mystery, although, some commentators believe it will largely end third-party payment arrangements for ERISA plans and IRAs.[52] Certainly, FINRA can craft more precise rules to provide guidance for its arbitration and disciplinary proceedings. However, this hardly covers the parties who will seek to use non-compliance with the rule against the industry. Indeed, some of the examples of compensation arrangements which the DOL states could help satisfy the Exemption seems to be removed from certain high commission investments,[53] although the DOL seems to be satisfied with differential fee arrangements if the advisor can demonstrate that advice on certain products requires greater expertise or time to justify a higher fee.[54] Ironically, the DOL states that the examples in the rule's commentary are only suggestions and gives the advisor or his or her firm the latitude necessary to design its compensation and employment arrangements, provided those arrangements promote, rather than undermine, the best interest and Impartial Conduct Standards.[55]

Notice and Data Collection Requirement

There is one final aspect of the rule which merits attention.[56] The rule requires certain notice and data collection requirements for firms seeking the Exemption, including notifying the DOL of the intention to rely on the Exemption.[57] The rule commentary makes it clear this is designed to help the DOL evaluate the effectiveness of the exemption.[58] The rule does not require prior DOL approval for the Exemption, as the commentary specifically states that "[t]his is a notice provision only and does not require any approval or finding by the [DOL]…"[59]

Ramifications of the Rule

The rule appears to create a new breach of contract cause of action for aggrieved parties.[60] Unfortunately, the DOL provides little guidance as to how this will actually work in practice.[61] For example, if one of the conditions of the exemption which does not relate to a breach of the best interest of the customer condition is violated and there is no investment loss, what damages are

At the annual meeting of the Kent County Bar Association (KCBA), the following individuals were recognized: KCBA board member Krista Schmitz; KCBA Lawyer of the Year Award winner Robert Sgroi; KCBA Lifetime Achievement Award winner David D. Curtin; KCBA board member Timothy J. Morgan; KCBA Court Employee of the Year Award winner Joe Wolferseder; and KCBA President Gregory S. Inman.

available to aggrieved investors? This is only one of many questions that presumably will need to be worked out in the courts or some other forum, such as arbitration. The DOL has made it clear that a violation of any of the Impartial Conduct Standards may result in the Exemption being lost.[62] Thus, if broker-dealers get it wrong, they face liability or regulatory enforcement proceedings, including class actions in federal or state courts.[63] Excise taxes under the Internal Revenue Code also loom. Furthermore, the DOL, as well as the Security and Exchange Commission (SEC) depending on the circumstances, may also have the authority to bring an enforcement action for violations.

The rule also provides that there may be no limitation or disclaimer of damages, presumably including punitive damages, allowed in FINRA arbitrations.[64] Nevertheless, there is some good news for the brokerage community because the rule expressly permits mandatory FINRA arbitration proceedings. At least for now, the SEC does not appear inclined to take up Congress' offer in Dodd-Frank to limit or prohibit arbitration of broker-dealer disputes.[65] FINRA would have to modify its current rules and regulations to account for the changes occasioned by the rule, at least for disputes involving ERISA and IRAs. In the past five years, it changed the rules for the selection of arbitration panels to allow customers to select an all public – i.e. non-securities professional – three person panel or a single non-public arbitrator,[66] probably in response to criticism of the industry.

The Best Interest Exemption appears intended to drive brokerage firms away from third-party compensation arrangements into flat fee arrangements. The DOL's primary concern is to protect retirees and concluded this is the way to do it, rightly or wrongly. In consideration of the unworkable Best Interest Exemption, Morningstar predicts that the industry winners will include discount brokerage firms who will take advantage of the low balance retirement accounts jettisoned by the larger firms because of cost considerations; although it does acknowledge that wealth management firms may offset, to a certain extent, potential loss revenues through increased resort to flat fee arrangements.[67] Under any circumstance, however, the costs of complying with the rule, as well as increased liability-related costs, will place a heavy burden on the

industry. It remains to be seen whether broker-dealers will push everything into flat fee arrangements, assuming the cost model works from a profit perspective, or seek to take advantage of the Best Interest Exemption. It is believed that with increased compliance, monitoring, training and documentation costs, sophisticated brokerage firms will be able to minimize the liability related costs. Whether broker-dealers will be able to continue current revenue streams from third-party payment arrangements is of much greater concern.

Securities and Exchange Commission

Because the SEC is relatively early in its rule making process, it is impossible to predict where it will come out in this process or when. Section 913(g) of the Dodd-Frank Act of 2010[68] mandated that the SEC study the effectiveness of existing standards of care for brokers and others. If the SEC concludes the current suitability standard is not sufficient to protect investors from inaccurate or biased advice, it is free to adopt a new standard by adopting its own rule. In January 2011, the SEC staff issued a brief report recommending that broker-dealers working with retail investors be subject to a uniform standard of care no less stringent than the standard for investment advisors.[69] The SEC's recommendation appears confined to investment advice similar to that provided by investment advisors, as opposed to traditional broker-dealer services.[70] The disclosure-based approach was rejected. However, the report is preliminary, as it does not adequately address the problems new regulation would cause for the industry, nor does it consider whether its recommendation could adversely impact investors.[71] Interestingly, the SEC seems wary of schemes that would materially impact traditional industry compensation models, from which it can reasonably be inferred the SEC would not adopt a mechanism similar to the DOL's Best Interest Exemption.[72] This is understandable because the SEC has to operate under the federal securities laws, and one of its mandates is to promote capital formation and economic growth.[73] A serious disruption of traditional broker-dealer compensation models could run counter to this mandate. The DOL has no such restrictions. Nevertheless, recently, SEC Commissioner Mary Jo White endorsed a fiduciary liability stan-

dard for broker-dealers, stating that "the SEC should act under 913 of Dodd-Frank to implement a uniform fiduciary duty for broker-dealers and investment advisors' where the standard is to act in the best interest of clients when giving advice to retail investors."[74]

Conclusion

This article has only scratched the surface of the DOL proposed rule which, despite its relative brevity, is complex and ambiguous in several places. First, at least with respect to providing investment advice to ERISA plan participants and IRA owners, broker-dealers will be treated as fiduciaries, even if they engage in flat fee compensation arrangements only. Given the SEC's current direction, absent some unforeseen major development, it is highly likely that broker-dealers sooner than later will be subject to a fiduciary standard, including conflict disclosure obligations for any investment advice provided to retail investors. However, it is highly doubtful that the SEC would go as far as the DOL has gone with the Best Interest Exemption.

Second, as confounding as the Best Interest Exemption may be, there is no indication the DOL intends to change its core structure. The chances the SEC will pre-empt the DOL rule with its own or that Congress will successfully block the rule appear unlikely at this time.

It is likely this new rule will result in significant costs for the brokerage industry, in terms of increased liability and administrative and lost revenues for wealth managers and insurance companies. In fact, the rule may re-shape whole sectors of the industry.

While some commentators are pessimistic concerning its application, the DOL has made it clear broker-dealers and their firms should be permitted to pursue traditional compensation arrangements, which is a good starting point.[75] Assuming rigorous protocols, documentation and other devices are established to prevent, or at least significantly reduce, the risk of noncompliance, liability related costs would be manageable. Compliance with the rule will not be easy and failure to comply can result in penalties, injunctive relief, or both, at the regulatory level. Moreover, it is hard to imagine that under any circumstance some revenues from third-party payment plans will not be lost.

Ultimately, sophisticated brokerage

firms will find a way to successfully navigate the rule, although it will come at increased costs and some loss of revenue for many. Put more simply, the days of easy money derived from providing investment advice to retail investors are probably over for wealth management firms. Many sophisticated brokerage firms have been preparing themselves for the challenges presented by the rule and eventual adoption of a rule by the SEC. FINRA seems to have been moving in this direction as well, albeit at a slow pace. Those who have done little or nothing in the hopes this is all going to go away are making a high risk bet and likely to get caught short when the dust settles. In sum, despite several uncertainties surrounding the rule and potential SEC action, prudent brokerage firms, especially wealth management companies and their legal counsel should consider planning for the inevitable now.

ENDNOTES

1 *The word "broker" is defined as "any person engaged in the business of effecting transactions in securities for the account of others." Securities Exchange Act of 1934 § 3(a) (4), 15 U.S.C. § 78c (1). The word "dealer" is defined as "any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.* ***Id.*** *at § 3(a) (5), 15 U.S.C. § 78c (4).*

2 *Proposed Conflict of Interest Rule—Retirement Investment Advice, 29 Fed. Reg. 80, Parts 2509, 2510 & 2550 (April 20, 2015).*

3 *Arthur B. Laby,* Fiduciary Obligations of Broker-Dealers and Investment Advisors, *55 Vill. L. Rev. 701, 704 (2010) [hereinafter* ***Fiduciary Obligations of Broker-Dealers****].*

4 ***Id.*** *at 705.*

5 *Morningstar,* The U.S. Department of Labor's Fiduciary Rule for Advisors Could Reshape the Financial Sector, *Financial Services Observer, 2 (Oct. 30, 2015) (hereinafter* ***Morningstar****).*

6 SEC Chief White Backs Fiduciary Rule for Brokers, *Think Advisor (Mar. 17, 2015), http://www.thinkadvisor.com/2015/03/17/sec-chief-white-backs-fiduciary-rule-for-brokers.*

7 *States also have certain regulatory authority over the broker-dealer community, which are beyond the scope of this article.*

8 *Fact Sheet, Department of Labor Proposes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year, Dept. Of Labor, 1* ***available at*** *http://www.dol.gov/ebsa/newsroom/fsconflictsofinterest.html.*

9 ***Id. See also*** *Andrew H. Friedman,* Department of Labor Fiduciary Proposal Threatens IRA Advice Status Quo, *Timely Thinking, Eaton Vance On Washington, 2 (Nov. 2015).*

10 *Andrew H. Friedman,* Department of Labor Fiduciary Proposal Threatens IRA Advice Status

Quo, *Timely Thinking*, *Eaton Vance On Washington*, 2 (Nov. 2015).

11 ***Id.***

12 *Gains to Investors and Compliance—Commentary, 29 Fed. Reg. 80, 21930 (April 20, 2015).*

13 ***Morningstar, supra*** *note 5, at 9. The entire financial world has witnessed the adoption of measures similar to the DOL rule and some measures are even more restrictive than the DOL rule.* ***Id.*** *at 9-19.*

14 *We pause to stress that this article covers only the high points regarding these proposed amendments.*

15 *An investment advisor is someone that provides a wide range of investment advice, but does not execute trades. Advisors "must adhere to a strict fiduciary standard including a duty of utmost good faith, full and fair disclosure of all material facts, and an obligation to use reasonable care to avoid misleading clients."* ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 716-17. "Under DOL's proposed definition, an individual receiving compensation for providing advice that is individualized or specifically directed to a particular plan sponsor…, plan participant, or IRA owner for consideration in making a retirement investment decision is a fiduciary."* ***See*** *Fact Sheet, Department of Labor Proposes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year, Dept. Of Labor, 1* ***available at*** *http://www.dol.gov/ebsa/newsroom/fsconflictsofinterest.html.*

16 ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 718.* ***See, e.g., SEC v. Tambone****, 5550 F.3d 106, 146 (1st. Cir. 2008) ("Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund and its investors.").*

17 ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 718.*

18 ***Id.*** *at 716-17.*

19 ***See*** *Marcia S. Wagner, Esq.,* Basics of ERISA, *The Wagner Law Group, 1 & 3-5 (Oct. 17, 2011).*

20 ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 719.*

21 ***Id.*** *at 730.*

22 ***See*** *FINRA Rule 2111 FAQ (Suitability),* ***available at*** *https://www.finra.org/industry/faq-finra-rule-2111-suitability-faq;* ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 706. Further, the DOL mentioned in its commentary to the rule changes that it "expects that most individual arbitration claims under this exemption will be subject to FINRA's arbitration procedures and consumer protections." Proposed Conflict of Interest Rule, Retirement Investment Advice—Commentary, 29 Fed. Reg. 80 at 21973 (April 20, 2015).*

23 *FINRA Rule 2111 FAQ (Suitability),* ***available at*** *https://www.finra.org/industry/faq-finra-rule-2111-suitability-faq.*

24 *FINRA RULE 2090 (Know Your Customer).*

25 *See FINRA RULE 2090 (Know Your Customer); FINRA Rule 2111 (Suitability).*

26 ***Fiduciary Obligations of Broker-Dealers, supra*** *note 3, at 721-22.*

27 *Press Release, U.S. Securities and Exchange Commission, SEC Releases Staff Study Recommending a Uniform Fiduciary Standard of Conduct for Broker-Dealers and Investment Advisors (Jan. 22, 2011)* ***available at*** *https://www.sec.gov/news/press/2011/2011-20.htm.*

28 *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, Parts 2509, 2510 & 2550 (April 20, 2015).
29 *Puneet Arora & Lynn Cook*, DOL Issues Re-Proposed Conflict-of-Interest Rule for Investment Advice, TOWERS WATSON, 2 (Aug. 24, 2015), *https://www.towerswatson.com/en-US/Insights/Newsletters/Americas/insider/2015/08/dol-issues-re-proposed-conflict-of-interest-rule-for-investment-advice [hereinafter* ***Towers****]*.
30 *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, § 2510.3-21(a)(1) (April 20, 2015).
31 ***Id.***
32 *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21936 (April 20, 2015).
33 ***Id.*** *at 21938.*
34 ***Id.*** *(emphasis added).*
35 *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, § 2510.3-21(a)(2) (April 20, 2015).
36 ***Id.*** *at § 2510.3-21(a)(2)(i).*
37 ***Id.*** *at § 2510.3-21(a)(2)(ii) (emphasis added).*
38 *Marcia S. Wagner, Esq.*, Basics of ERISA, THE WAGNER LAW GROUP, 5 (Oct. 17, 2011).
39 *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21941 (April 20, 2015).
40 ***See*** *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, § 2510.3-21(b) (April 20, 2015); *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21941 (April 20, 2015).
41 ***See*** *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, § 2510.3-21(b)(1) (April 20, 2015); *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21941 (April 20, 2015).
42 ***See*** *Proposed Conflict of Interest Rule—Retirement Investment Advice*, 29 Fed. Reg. 80, § 2510.3-21(b)(1) (April 20, 2015); *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21941-42 (April 20, 2015).
43 ***See*** *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21944-45 (April 20, 2015).
44 ***See*** *Best Interest Contract Exemption—Commentary*, 29 Fed. Reg. 80 at 21962 (April 20, 2015).
45 ***Morningstar, supra*** *note 5 at 20-32.*
46 ***See*** *Proposed Conflict of Interest Rule—Commentary*, 29 Fed. Reg. 80 at 21945 (April 20, 2015).
47 ***See*** *Best Interest Contract Exemption—Commentary*, 29 Fed. Reg. 80 at 21964-65 (April 20, 2015).
48 ***Id.*** *at 21961.*
49 *Proposed Best Interest Contract Exemption*, 29 Fed. Reg. 80, § 2550, II (d) (April 20, 2015). ***See also*** *Friedman,* ***supra*** *note 9, at 2.*
50 *Friedman,* ***supra*** *note 9, at 2.*
51 ***Id.***
52 ***Morningstar, supra*** *note 5, at 9.*
53 *Best Interest Contract Exemption—Commentary*, 29 Fed. Reg. 80 at 21971 (April 20, 2015).
54 ***Id.***
55 ***Id.***
56 *The proposed rule also calls for further comments on the appropriateness of certain "lowest fee" investment products, provides for the sale of debt securities from broker-dealers' firms, and other exemptions all of which are beyond the scope of this article. However, it is important to note that*

When I find myself in times of trouble…
Rhode Island Bar Association *pro bono* Public Services offer excellent means for members to assist those in need of legal assistance.

Handling *pro bono* cases through the Rhode Island Bar Association's Volunteer Lawyer Program and the Legal Information & Referral Service for the Elderly ensures your efforts are directed where they are needed most. Providing critically needed legal service fulfills your moral, ethical and social duty to those who have limited or no access to the legal system and reinforces the Bar Association's resolution supporting the Rhode Island Supreme Court's for *pro bono* service recommendations in accordance with Rule 6.1. And, the Bar provides volunteer attorneys with: free malpractice insurance covering accepted *pro bono* cases; free training programs (some including CLE credits) and materials; reimbursement of litigation costs; and access to mentor attorneys. The Bar Association's *pro bono* Public Service programs offer opportunities for attorneys in a range of practice areas and levels of time commitment. And, it is easy to join! Applications for the Volunteer Lawyer Program and Elderly Program are available at ribar.com or by contacting the Bar's Public Service Director Susan Fontaine by telephone: 401-421-7722 or email: sfontaine@ribar.com.

the DOL is seeking further comment on the proposed eight month transition period for the Best Interest Exemption and other provisions once the rule is published in the Federal Register. Thus, a revised effective date for certain important provisions could significantly extend the transition period for compliance.

57 *Proposed Best Interest Contract Exemption, 29 Fed. Reg. 80, § 2550, V (April 20, 2015).*

58 *Best Interest Contract Exemption—Commentary, 29 Fed. Reg. 80 at 21976 (April 20, 2015).*

59 ***Id.***

60 ***Id.** at 21969.*

61 ***Id.***

62 ***Id.***

63 *Fact Sheet, Department of Labor Proposes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year, DEPT. OF LABOR, 4* ***available at*** *http://www.dol.gov/ebsa/newsroom/fsconflictsofinterest.html.*

64 *Class actions are not permitted under FINRA. Daniel Herbsi,* The Death of Class Actions? A FINRA Panel Ruling Could Signal the End of Class Claims Against Brokers, *REED SMITH (Feb. 28, 2013),* ***available at*** *http://www.globalregulatoryenforcementlawblog.com/2013/02/articles/securities-litigation/the-death-of-class-actions-a-finra-panel-ruling-could-signal-the-end-of-class-claims-against-brokers/.*

65 *Dodd-Frank Wall Street Reform and Consumer Protection Act, Publ. L. No. 111-203, § 913 (2010);* ***see also*** Fiduciary Obligations of Broker-Dealers, ***supra*** *note 3, at 703; Polina Demina,* Broker-Dealers and Investment Advisors: A Behavioral Economics Analysis of Competing Suggestions for Reform, *113 MICH. L. REV. 429, 437(2014).*

66 *John F. Fullerton, III & Aime Dempsey,* How to Choose a FINRA Arbitration Panel, *U.S. ARBITRATION J., 36 (Oct./Nov. 2015).*

67 ***Morningstar, supra*** *note 5, at 71.*

68 *Dodd-Frank Wall Street Reform and Consumer Protection Act, IX § 913 (2010).*

69 *Draft – Recommendation of the Investor as Purchase Subcommittee Broker-Dealer Fiduciary Duty,* ***available at*** *http://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation.pdf.*

70 ***Id.***

71 ***Id.***

72 ***See id.****; Daniel M. Gallagher, SEC Commissioner, Remarks at the SEC Speaks in 2015 (Feb. 20, 2015) (transcript* ***available at*** *http://www.sec.gov/news/speech/022015-spchcdmg.html).*

73 ***See*** *Daniel M. Gallagher, SEC Commissioner, Remarks at Heritage Foundation (Sept. 17, 2014) (transcript* ***available at*** *http://www.sec.gov/News/Speech/Detail/Speech/1370542976550); Securities Act 3(b).*

74 SEC Chief White Backs Fiduciary Rule for Brokers, *THINK ADVISOR (Mar. 17, 2015), http://www.thinkadvisor.com/2015/03/17/sec-chief-white-backs-fiduciary-rule-for-brokers.*

75 ***See*** *Proposed Conflict of Interest Rule, Retirement Investment Advice—Commentary, 29 Fed. Reg. 80 at 21971 (April 20, 2015).* ❖

Lawyers on the Move

Stephen P. Cooney, Esq. is now a partner at **Higgins, Cavanagh & Cooney, LLP**, 123 Dyer Street, Providence, RI 02903.
401-272-3500 scooney@hcc-law.com

John Dorsey, Esq. is now a partner in the law firm of **Ferrucci Russo PC**, 55 Pine Street, Providence, RI 02903.
401-455-1000 jdorsey@frlawri.com www.frlawri.com

Kristy J. Garside, Esq. is now a partner in what was The Law Offices of Jeremy W. Howe, Ltd., now named **The Law Offices of Howe & Garside, Ltd.**, 55 Memorial Blvd., Unit 5, Newport, RI 02840.
401-841-5700 kgarside@counsel1st.com
www.counsel1st.com

Kenneth Kando, Esq. moved his law office to Centerville Commons, 875 Centerville Rd., Unit 2, Warwick, RI 02886.
401-826-2070 kenkandolaw@gmail.com

Kelly, Kelleher, Reilly & Simpson law firm relocated its Providence, RI, and Narragansett, RI, offices to 1041 Ten Rod Road, Suite B, North Kingstown, RI 02852.
401-272-1312 401-789-7800

The Law Offices of Howe & Garside, Ltd. with principal offices in Newport, RI, has opened a branch office in Lincoln, RI at 640 George Washington Hwy, Bldg. B, Ste. 103, Unit 16.

Adam M. Ramos, Esq. is now a partner at **Hinckley Allen**, 100 Westminster Street, Suite 1500, Providence, RI 02903.
401-274-2000 aramos@hinckleyallen.com
www.hinckleyallen.com

John E. Scholhamer, Esq. is now a partner in the law firm of **Duffy & Sweeney, LTD**, 1800 Financial Plaza, Providence, RI 02903.
401-455-0700 tscholhamer@duffysweeney.com
www.duffysweeney.com

In Memoriam

Forrest Lee Avila, Esq.
Forrest Lee Avila 69, of Warren, RI passed away on January 27, 2016. He was born in Fall River, a son of the late Erlino Avila and Marcia Luther Avila. Forrest served as an attorney for the RI Department of Education for 35 years before retiring in 2013. He got his start at the Attorney General's Office. He was a shortwave and ham radio enthusiast. He was a voracious reader and avid RI history buff. He spoke many languages and was a lifelong learner.

Ronald Winston Del Sesto, Esq.
Ronald Winston Del Sesto, 75, of Providence, passed away on December 30, 2015. The son of former Rhode Island Governor Christopher Del Sesto and Lola Faraone Del Sesto, Mr. Del Sesto served as general counsel to Rhode Island's first woman Secretary of State, Susan L. Farmer and for more than 25 years as a member of the American Bar Association's Commission on Uniform State Laws. He was president of the Justinian Law Society and a National Italian American Foundation board member. Until 2011, he served as Honorary Vice Consul for Italy. Mr. Del Sesto was a graduate of Classical High School, Georgetown University and Boston College Law School. He joined his older brother, Christopher T. Del Sesto, in private practice for several years then partnered with former Rhode Island Attorney General Herbert DeSimone for nearly ten years. Mr. Del Sesto worked on national adoption of several uniform state laws including the Uniform Anatomical Gift Act of 1987. He co-founded the Umbrian Earthquake Relief Fund in 1997 and was a sponsor of the International Italian Film Festival. He was an avid reader and a connoisseur of good food. He was a dual citizen of the United States and Italy. He is survived by his wife of twenty-one years, Deborah Elsbree Del Sesto; his three children from his first marriage to Bettina Buonanno Del Sesto: Cristina Del Sesto and Ronald Del Sesto Jr., both of Washington DC, and Justin Del Sesto of Fort Lauderdale, FL.; his step-daughter Kristen Coleman Dubois of Saunderstown, RI; and his brother, Gregory Del Sesto of Ft. Lauderdale, FL.

Helene Gerstle, Esq.
Helene Gerstle passed away on January 5, 2016. She was born in the Bronx, NY to Helmut and the late Mary Gerstle and raised in Yonkers, New York. She was a graduate of Roosevelt High School, the University at Albany SUNY and the Albany Law School. In addition to her 33 years of litigation experience, she was an adjunct professor at University of Massachusetts Dartmouth Law School. She is survived by: her dear friend of 40 years Len Smith; her father and stepmother Rita Gerstle; and her siblings and sisters-in-law; Mark Gerstle, Alice Beckman, and Robert and Doreen Gerstle. Her paintings were displayed at the Newport Museum. Helene helped create the Elmwood Neighborhood Association, and served as Executive Director at the Community Legal Services where she was an advocate for the less fortunate. She volunteered at the Gamm Theatre.

Hon. John A. Mutter
John A. Mutter, Associate Justice of the Rhode Island Family Court, of Walcott Street, Pawtucket passed away on December 22, 2015. He was born in Pawtucket, the son of the late Augustus and Lena Sweeney Mutter. Judge Mutter was the husband of Bonnie Ruth Baken Mutter. He was predeceased in death by his wife Barbara Menagh Mutter. Judge Mutter was a United States Navy Veteran of WWII. Besides his wife Bonnie, Judge Mutter is survived by his children: Christopher S. Mutter and his wife Claudia, Kristina L. Sampson and her husband Phillip, Lisa A. Gendreau and her husband David, his daughter-in-law Karole Mutter, and Kurt F. Mutter. Judge Mutter was a 1945 graduate of St. Raphael Academy. He earned his Bachelor of Arts degree from Providence College and his Law degree from Boston University. He was a member of the American Bar Association, the Rhode Island Bar Association, and the American Judicature Association. Judge Mutter was a member of the National Association of Juvenile and Family Court Judges and the National Association of Trial Judges. As a man for all seasons and Past President of the Providence County Kennel Club, Judge Mutter enjoyed exhibiting dogs from Irish Wolfhounds to Great Danes to Weimaraners, and his current champion Yorkshire Terrier.

Vincent J. Oddo III, Esq.
Vincent J. Oddo, 60, formerly of Cranston, RI, passed away on December 28, 2015, in his home in Hollywood, FL. Vincent was the beloved son of Eleanor L. DeBlasio Oddo and the late Dr. Vincent J. Oddo, Jr. In addition to his mother, he is survived by his son Vincent J. Oddo, and stepdaughter Marisa Pizzarelli, and his sisters Eleanor Oddo San Antonio and Julianne Oddo, and his brother Stephen Oddo. He was a graduate of Classical High School, Providence College and Suffolk University School of Law. Vincent became a criminal defense attorney in Providence, RI, where he practiced over 35 years. Vincent, known as Vinny, will be remembered for his sharp intellect, quick wit, great sense of humor, and passion for sports cars.

William Renzulli, Esq.
William Renzulli, 82, of Cranston, passed away on January 23, 2016. Born in Providence, he was the son of the late Pasquale and Maria Ricci Renzulli. William was a US Korean war veteran. He was a graduate of Brown University and Boston University Law School. William was a member of the Young Italian Imperial Club and the Italo American Club. He was the devoted father of Donna Burke and her husband Ken of South Kingstown, Doreen Carey and her husband Chuck of South Kingstown, Maria Gould and her husband Donald of Cranston.

In Memoriam

William was the longtime companion of Margurite D'Ambra of Cranston. As a young attorney William was campaign manager for Francis Rao's bid for mayor of Providence. Later Mayor Doorley appointed him Director of the Neighborhood Youth Corps anti-poverty federal program for inner city youth. William is credited with creating the independent democratic committee, instrumental in electing the first Italian-American mayor of Providence. William was also a music enthusiast, who enjoyed both jazz and Frank Sinatra. He was a well-read man, a history buff, avid baseball fan and loved debating political issues. He will be remembered as a generous and caring human being.

William R. Vallone, Esq.
William R. Vallone, 64, of Exeter, passed away on February 1, 2016. Born in Providence, he was a son of the late Dr. John J. and Elia J. Nardolillo Vallone. William operated his own law practice for many years before his retirement. William was a graduate of Moses Brown, Cornell University, and The New England School of Law. He is survived by two sisters, Grace M. Mariorenzi and her husband Dr. A. Louis of Jamestown and Elia V. Chepaitis and her husband Joseph of Grassy Key, FL; and his brother Louis J. Vallone, Esq. and his wife Marcia of Warwick.

Advertiser Index

Rhode Island Bar Association Staff & Responsibilities

To contact staff members, dial the main number 401.421.5740 or use the individual's email address.
Staff telephone extensions or direct lines and email addresses appear beneath their titles and names.
Information concerning Bar-related programs and services may be directly accessed via the Bar's website at ribar.com.

Executive Director
Helen Desmond McDonald, ext. 4837
hmcdonald@ribar.com

Communications Director
Frederick D. Massie, ext. 4838
fmassie@ribar.com

Continuing Legal Education (CLE) Director
Tanya Nieves, ext. 4839
tnieves@ribar.com

Finance Director
Karen L. Thompson, ext. 4836
kthompson@ribar.com

Coordinator of Continuing Legal Education (CLE)
Karen A. Lomax, ext. 4847
klomax@ribar.com

Gatekeeper/CLE Program Assistant
Allison Jean, ext. 4846
ajean@ribar.com

Assistant Director of Communications
Kathleen M. Bridge, ext. 4845
kbridge@ribar.com

Lawyer Referral Service Coordinator
Lisa Calcagni, 421-7799, ext. 4834
lcalcagni@ribar.com

Lawyer Referral Service & Elderly Program/Coordinator
Elisa King, 521-5040, ext. 7722
eking@ribar.com

Office Manager
Susan J. Cavalloro, ext. 4840
scavalloro@ribar.com

Public Services Director
Susan A. Fontaine, 421-5740 ext. 4851
sfontaine@ribar.com

Rhode Island Bar Foundation – Interest On Lawyers Trust Accounts (IOLTA) Director
Virginia M. Caldwell, 421-6541 ext. 6541
gcaldwell@ribar.com

Volunteer Lawyer Program Assistant
Debra Saraiva, 421-7758 ext. 4842
dsaraiva@ribar.com

Volunteer Lawyer Program Coordinator
John H. Ellis, 421-7758 ext. 4833
jellis@ribar.com

Continuing Legal Education (CLE) *Tanya Nieves*
Publications *Karen A. Lomax*
Seminars *Tanya Nieves*

Dues, Membership *Susan J. Cavalloro*

Executive Committee *Helen D. McDonald*

Casemaker/Computer Assistance *Tanya Nieves*

Rhode Island Bar Journal Articles and Advertising *Frederick D. Massie*

Lawyer Referral Service *(401-421-7799)* *Susan A. Fontaine*
– Reduced Fee Program
– Referral Service for the Elderly
– Lawyers for the Arts

Volunteer Lawyer Program *(401-421-7758)* *Susan A. Fontaine*

US Armed Forces Legal Services Project *(401-521-5040)* *Susan A. Fontaine*

Online Attorney Directory Photographs *Kathleen M. Bridge*

Law-Related Education Programs *Kathleen M. Bridge*

Speakers Bureau *Kathleen M. Bridge*

Lawyers Helping Lawyers
Confidential assistance for lawyers and their families
Coastline Employee Assistance Program (Coastline EAP) *(401-732-9444) or (800-445-1195)*
Bar Office *Helen D. McDonald*

Annual Meeting
Program *Tanya Nieves*
Exhibitors *Frederick D. Massie*

Client Reimbursement Fund *Helen D. McDonald*

Committees *Kathleen M. Bridge*

Fee Arbitration *Helen D. McDonald*

House of Delegates *Helen D. McDonald*

IOLTA Program *Virginia M. Caldwell*

Legislation *Helen D. McDonald*

Mailing Lists, Labels *Kathleen M. Bridge*

Member Address Changes *Susan J. Cavalloro*

Membership Benefits
See the Bar's web site for more information
ABA Legal Technology Resource Center *lawtechnology.org/services.html*
ABA Members Retirement Program *1-800-826-8901 abaretirement.com*
ABA Publications Discount Program *ababooks.org*
Business Owners Insurance Aon/Affinity Insurance *1-800-695-2970 attorneys-advantage.com*
Disability Insurance – Guardian Life Robert J. Gallagher & Assoc. *401-431-0837 gallagherassoc.com*
Law Firm Merchant Account – Credit Card Processing for Attorneys *1-866-376-0950 affiniscape.com/ribar*
Legal Career Center *jobs.ribar.com/home*
Professional Liability Insurance Aon/Affinity Insurance *1-800-695-2970 attorneysadvantage.com/law*
USI New England (Blue Cross / Delta Dental) *401-558-3165*

Membership/Status Inquiries *Susan J. Cavalloro*

News Media Inquiries *Frederick D. Massie*

Pro Bono Programs *(401-421-7799)* *Susan A. Fontaine*

Public Relations/Communications *Frederick D. Massie*

Rhode Island Bar Foundation *(401-421-6541)* *Virginia M. Caldwell*

Scholarship Program/Grants *(401-421-6541)* *Virginia M. Caldwell*

Website Inquires *Kathleen M. Bridge*

Rhode Island Bar Association, 41 Sharpe Drive, Cranston, RI 02920 Tel: 401.421.5740
Fax: 401.421.2703 Email: info@ribar.com Web: ribar.com

For professional liability insurance designed from YOUR perspective, please call **1-800-695-2970** or visit **www.attorneys-advantage.com** today!

When you sit down with a client, you strive to see their legal issue from their perspective and make recommendations based on their unique situation. We operate similarly.

At Aon Attorneys Advantage, we understand the services you perform and the types of risks you may encounter, so we are able to offer insurance solutions designed to fit your individual needs. You receive:

- A team of specialists dedicated solely to attorneys' professional liability.
- Insurance created to help cover law firms' unique exposures.
- Quality coverage at a price that fits your budget.

Sponsored by: RHODE ISLAND Bar Association 1898

Administered by: AON

Underwritten by: AXIS

Coverage is underwritten by member companies of the AXIS group of insurance companies, rated "A+" (Strong) by Standard & Poor's and "A+" (Superior) XV by A.M. Best. Coverage may not be available in all states and jurisdictions.

Aon Affinity is the brand name for the brokerage and program administration operations of Affinity Insurance Services, Inc.; (TX 13695); (AR 244489); in CA & MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services Inc.; in CA, Aon Affinity Insurance Services, Inc., (0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency.

E-10932-0914