

# Rhode Island Bar Journal

Rhode Island Bar Association Volume 65. Number 2. September/October 2016



**Rhode Island Financial Town Meetings**

**Rhode Island's Brownfields Grant Program**

**Amended Certification of Compliance**

**Medical Expense Deduction Aging Out**

**BOOK REVIEW: *A Common Struggle***



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# Our Bar Provides Assistance to Members in Need



**Armando E. Batastini, Esq.**  
President  
Rhode Island Bar Association

**Most lawyers see themselves through difficult days with a mix of perseverance and foresight. However, some of our fellow lawyers, are not as fortunate, and struggle with significant mental health issues exacerbated by the stress intrinsic to our profession.**

I consider myself fortunate to have a career in the law. The law has given me an interesting and gratifying profession that provides for me and my family. Even for someone like me who enjoys being a lawyer, some days can be an oppressive grind. My personal and anecdotal understanding is that most lawyers see themselves through difficult days with a mix of perseverance and foresight so the practice carries far more upside than downside.

Some of our fellow lawyers, however, are not as fortunate, and struggle with significant mental health issues exacerbated by the stress intrinsic to our profession. This point was brought home during a recent meeting of the Rhode Island Bar Association's Executive Committee and the Chief Judges of our state and federal courts. The Executive Committee and the Chief Judges meet on an annual basis to discuss issues of common interest like e-filing, judicial vacancies, staffing of sheriffs, and *pro se* litigants – all important topics.

This year, the discussion turned to mental health and substance abuse issues affecting lawyers. Frankly, I was surprised at the ubiquity of the problem. Many of the judges acknowledged they deal with these issues frequently. One Chief Judge reported dealing with a matter involving attorney substance

abuse or mental health on an average of once a week. More encouragingly, I can pass along that our Chief Judges are attuned to these issues and handle them with incredible sensitivity and confidentiality.

A recent national study, conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs, reported similar results. The findings of that study disclosed troubling levels of problem drinking and other mental health problems amongst lawyers. The study also found that attorneys in the first ten years of practice exhibit the highest incidence of these problems.

Our Bar Association has programs currently available to assist those lawyers in need of help. The Rhode Island Bar Association's Lawyers Helping Lawyers Program and Committee, in partnership with professional health counselors Coastline Employee Assistance Program, provide free, confidential and rapid help, including professional clinical assessments, and will facilitate appropriate treatment for Bar members and their family members.

The Bar Association also provides free loss prevention programming each year with the support of Aon Affinity, our professional liability provider. This year, the program will present James Blackburn from North Carolina, who will discuss how personal issues with stress created grave ethical problems for him, and he will provide some suggestions as to how lawyers may avoid these same issues. He is a highly sought and widely admired speaker on these topics. The August sessions sold out, but seating for sessions on September 13, 14 and 15 remain available.

The practice of law can be trying enough on its own. I strongly encourage any of our members who are struggling with mental health or substance abuse problems to please reach out and seek assistance to address these issues. ♦

## Rhode Island State Law Library Renamed for Late Chief Justice Weisberger



A plaque marking the naming of the Rhode Island State Law Library at the Licht Judicial Complex after the late Rhode Island Supreme Court Chief Justice Joseph R. Weisberger was unveiled by Chief Justice Paul A. Suttell and J. Robert Weisberger, Jr., former Rhode Island Bar Association President and son of the late Chief Justice.

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#### 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.
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- 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.

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# Rhode Island Financial Town Meetings: History, Law, & Policy



Peter F. Skwirz, Esq.  
Practices out of East  
Providence

## Introduction

Rhode Islanders can trace the origins of the town meeting to the earliest form of government in the colony. When Roger Williams and a small band of original proprietors founded Providence in 1636, they agreed to a fortnightly meeting of “masters of families” or “householders” to discuss matters of “common peace, watch, and planting.”<sup>1</sup> Thus, from the time of the founding of the colony, and later the state, the town meeting was the primary mode of municipal governance. In a nutshell, the town meeting form of government is a direct participation democracy involving the qualified electors of a town gathering to elect officers, pass municipal regulations, and generally conduct the affairs of the town. Henry David Thoreau referred to the town meeting as “the true Congress, and the most respectable one that is ever assembled in the United States.”<sup>2</sup>

A severe limitation to this form of government is that it isn’t practical or effectual for handling the affairs of larger municipalities. Between 1832 and 1958, eight Rhode Island municipalities, due to increasing population, were reincorporated

by the General Assembly from townships to cities.<sup>3</sup> The reason for and effect of the reincorporation was to change the municipal governance structure from direct democracy to representative democracy, to better handle the affairs of a larger population. Historically, in a city, “its general affairs are administered by means of certain officers, such as mayor, aldermen, and councils, to whom

the citizens entrust most of the legislative and the executive powers, [but] in towns they exercise [these powers] in person, in town meetings.”<sup>4</sup>

With the home rule amendment to the state constitution,<sup>5</sup> a Rhode Island municipality may abandon the town meeting form of government without reincorporation as a city by the General Assembly. As the state’s population has grown, almost all of Rhode Island’s 31 towns have abandoned the town meeting form of government, instead choosing to adopt a council-

administrator, council-manager, or council-mayor form of government. Only four small towns – Foster, Glocester, Exeter, and Little Compton – maintain the town council-town meeting form of government.<sup>6</sup>

Although the general town meeting has fallen out of favor as a form of municipal government, a species of town meeting is still fairly prevalent in Rhode Island towns. A financial town meeting (FTM) operates like a general town meeting, except that the scope of matters considered at the meeting is restricted to the adoption, rejection, or modification of a proposed budget submitted to the electorate by the town officials. Even though the majority of Rhode Island towns have abandoned the general town meeting form of government, 16 of Rhode Island’s 31 towns maintain an FTM as the final part of their budget processes. Even Coventry, Rhode Island’s 7th largest municipality and largest town,<sup>7</sup> maintains an FTM as part of its budget process.<sup>8</sup> The question arises: why would a town discard the general town meeting form of government, yet still maintain an FTM as part of its budget process? A review of the FTM’s historical origins provides some insight. In turn, this review sheds light on the powers given to and restrictions placed upon the FTM.

## History of the Financial Town Meeting in Rhode Island

The origins of the FTM date back to the original constitution adopted by the state in 1843. Earlier, under the Colonial Charter, the right to vote was restricted to real property owners.<sup>9</sup> With the adoption of the 1843 constitution, this restriction on the right to vote was *partially* abolished. However, up until the constitutional convention of 1973, the R.I. constitution still required a person to either own real property or pay taxes on personal property of at least \$134 “to vote upon any proposition to impose a tax or for the expenditure of money in any town.”<sup>10</sup> “By the adoption of the [1843] constitution it became necessary for the first time to hold a financial town meeting for the transaction of such business as only taxpaying electors could transact and also a general town meeting for the

**Most Rhode Island towns have abandoned the general town meeting as a form of modern municipal governance. Towns should take a second look to determine if it is time to abandon the financial town meeting as well.**

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*Marian Wright Edelman  
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election of members of the town council and other town officers in the election of whom all the electors, whether taxpayers or not, were entitled to participate.”<sup>11</sup>

The Rhode Island Supreme Court described the move to separate the FTM from the general town meeting in *Carr v. Kettle*, 75 A. 488, 489 (R.I. 1910) as follows:

At the time of the adoption of the present constitution in 1843, and for many years thereafter, it was apparently the universal custom to hold the general town meeting for the election of town officers and the financial town meeting on the same day... But with the great growth of the population of the State and the corresponding increase in the amount of the appropriations necessary for the expenses of the town, as well as the greater number of appropriations required therefor and the increasing difficulty of having a larger electorate balloting for officers while the taxpayers were debating the town appropriations at the same time and place, the inevitable difficulty of determining who were entitled to vote in a given case on a *viva voce* vote or on a show of hands, and for other weighty and proper reasons, the former practice was abandoned.<sup>12</sup>

Taxpaying qualifications on voting were historically taken very seriously in Rhode Island. For instance, in the case of *State v. Macomber*, 7 R.I. 349 (1863), due to a bureaucratic mix-up with the Town’s tax rolls, Joseph E. Macomber voted in the 1862 Portsmouth Town Meeting without paying a qualifying tax. Mr. Macomber was arrested, tried, and convicted of voter fraud as a result. The Rhode Island Supreme Court ultimately overturned the conviction, holding that Mr. Macomber voted based on an honest mistake as to his qualifications, and so lacked a criminal intent. However, the Court’s decision somewhat ominously refers to Mr. Macomber as “the prisoner” throughout, implying that Mr. Macomber spent at least some time behind bars for casting his vote without paying a qualifying tax.

People often have a romantic picture of governance by town meeting as an inclusive and egalitarian exercise. This romantic ideal conjures up the image of the iconic Norman Rockwell painting, “Freedom of Speech,” where a blue collar worker stands and speaks as an equal

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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!

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every day!



among a crowd of well-dressed men in suits and ties. However, the FTM in Rhode Island was not developed as an inclusive or egalitarian practice. Instead, having a separate FTM was developed as a means of excluding non-taxpaying and non-property-holding voters from participating in the town's financial affairs. As the general town meeting was slowly discarded in towns due to growing population and a larger electorate, the FTM has been able to survive because, historically, it was only open to a smaller subset of the general electorate, excluding a large portion of voters from participation. Although this exclusive characteristic of FTMs was abolished by constitutional amendment in 1973, this historical backdrop gives insight into the operation, powers, and limitation of the FTM as a system of governance.

### The Financial Town Meeting's Powers and Limitations

At an FTM, voters gather in a large room and are presented with the proposed town budget for the upcoming fiscal year, as prepared by the town council, manager, administrator, or mayor, depending on the particular town's government structure and budget process. If a quorum is met, as defined by town charter, the FTM will vote on the proposed budget. The FTM need not only vote up or down on the proposed budget as a whole, but instead may go item by item and "modify the proposed budget," usually by voice vote after a motion by a voter made on the floor of the meeting. If budget modifications are enacted by the FTM, the town is "bound by the modifications."<sup>13</sup> In many cases, the FTM can eliminate particular budgeted items entirely, as "[i]t is a well-settled proposition that absent an obligation to appropriate funds for a specific purpose, the voters at a financial town meeting may refuse to make any appropriations for a given purpose."<sup>14</sup> Additionally, the FTM can add conditions to appropriations, as "[i]t is equally well established that if the financial-town-meeting voters decide to make an appropriation, specific limitations may be attached to the appropriation."<sup>15</sup>

This broad power of the voters at an FTM can often have very drastic results. For instance, in *Hebert v. Duffy*, 121 A. 127, 130 (R.I. 1923), the Rhode Island Supreme Court considered a West Warwick FTM that appropriated money

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to the West Warwick Police Department. The FTM added a condition to the appropriation that none of the money could be used “to pay the salary of the present Chief of Police, so long as he shall remain in said office.”<sup>16</sup> The Court upheld this condition, as the FTM was not legally obligated to appropriate any money to pay the police chief. Accordingly, the Town of West Warwick could not spend any money from that fiscal year’s budget to pay the police chief, so the FTM, in effect, fired the police chief.

Also, an FTM is not subject to the Open Meetings Act, so is not subject to the notice requirements of that section.<sup>17</sup> Instead, under R.I. Gen. Laws 1956 § 45-3-12, the town must publish a warrant giving notice of the FTM. “All that is necessary in such a notice is that it be sufficiently explicit to call the attention of the voters to the subject to be considered and acted on.... Consequently, it is not necessary that a warrant contain an accurate forecast of the precise action that the meeting will take upon the subject matter stated in the warrant.”<sup>18</sup>

Accordingly, the warrant for the FTM will merely give notice of the proposed budget and state that the FTM will vote on the same. The warrant need not give any notice of the plethora of actions that could be taken by the voters at the FTM, such as diminishing or increasing particular salaries, particular line items in the budget, or even creating a new line item for municipal expenditure.

Although the power of the FTM is great, it is not unlimited. Due to the historically limited role of the FTM, the FTM may not exercise general legislative or executive powers of the town. For instance, in *Capone v. Nunes*, 132 A.2d 80 (R.I. 1957), the Bristol FTM attempted to create a harbor commission and appoint members to the same, for the purpose of supervising the construction of docks in the town. In ruling the FTM’s action was *ultra vires* and not properly within the scope of the FTM, the Court explained that “the other qualified electors [of the town] have as great voting power as the taxpaying voters in the election of officers and the appointment of such agents.” While the reasoning for the Court’s holding in *Capone* was eliminated by the 1973 constitutional amendment, the holding appears to remain good law.

*Continued on page 35*

## Medicare and Medicaid CLE Program Draws Large Crowd In-Person and Via Live Webcast



The CLE program, *Current Developments in Medicare and Medicaid for Long-Term Care*, reviewed an under-utilized technique to enable clients to obtain extended access to the Medicare Part A skilled nursing home benefit. The presenters, including (l-r) Mark B. Heffner, Esq.,

of Heffner & Associates, and Jennifer Wood, Esq., and Deborah George, Esq., both of the Executive Office of Health and Human Services, discussed changes in the structure and procedures at the Rhode Island Offices of Health and Human Services (OHHS) and the Department of Human Services (DHS) and how to assist clients with Medicaid applications. The program had over 140 attendees both in-person, and via live webcast. This CLE program is now available, on-demand for purchase and viewing on the Continuing Legal Education section of the Bar’s website at [ribar.com](http://ribar.com).

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# Rhode Island's Brownfields Grant Program: The "s" is at the end.<sup>1</sup>



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Law Office of Marisa  
Desautel, LLC  
Providence



John A. Langlois, Esq.  
Providence

**In September of 2015, the DEM's Brownfields program was significantly enhanced by state administration, providing for grants to conduct investigation and cleanup of contaminated sites.**

There is a scene in the television show, *The Big Bang Theory*, in which Sheldon is visiting his friend, Raj. Sheldon comments that Raj's apartment seems to be in a very old building. Raj responds proudly, "Sixty years. It used to be a watch factory." Sheldon asked, "Don't you worry about the residual radium from the luminous dials?" Raj looked around nervously and answered, "Not until now!"

That brief conversation captures the essence of the Rhode Island Brownfields program: the reuse of real property that causes anxiety about the potential harmful health effects resulting from the prior use. There are hundreds of such re-developed, formerly contaminated sites all over the state. Your child's school, your church or your office may be a Brownfield site. Even the Rhode Island Department of Environmental Management (DEM) offices and the Save the Bay headquarters are former contaminated properties that have been resurrected for new purposes. The DEM estimates Rhode Island has over ten thousand potential Brownfield properties.<sup>2</sup>

The Rhode Island Brownfields program began in 1995 with the enactment of the state's Industrial Property Remediation and Reuse Act.<sup>3</sup> The passage of this legislation was driven largely by lenders and investors who were reluctant to finance development projects with the specter of costly environmental cleanups and years of uncertainty hampering the return on their investment. Prior to the Brownfields program, a property could be classified in only two ways: pristine or contaminated. For a property with any hazardous materials on site, the DEM required cleanup to pristine condition. There

was no middle ground, even if the intended use did not necessitate the property being virginal.

The Brownfields program provided flexibility for the cleanup standards to be matched to the site's expected future use. This meant, for example, that contaminated soil under the foundation of a building in downtown

Providence would not have to be removed if the intended use of that building would not disturb that soil and the hazardous

materials were not migrating offsite. The cleanup is now risk based, rather than simply dirty to clean. This approach satisfied both the developers (who were able to proactively manage their environmental liabilities) and the environmentalists (who cheered cleanups at many abandoned contaminated sites).

The Brownfields program also creates an enormous prospect for attorneys in its remediation process. The beneficial reuse of environmentally-contaminated properties in Rhode Island remains a vast opportunity for practitioners to consider grant applications, creative financing, transactional cleanups, and/or Court-supervised cleanups.

Many acres of Brownfields occupy prime commercial/industrial locations within the state's urban corridor.<sup>4</sup> A brownfields site is defined by the Grant Regulations as "a property where a known or suspected release of petroleum and/or hazardous material presents a barrier to the sale, reuse, or redevelopment of the site, or where uncertainty on the costs of remediation adversely impacts the value of the property." Grant Regulations, Section 6.00.

In September of 2015, the DEM's Brownfields program was significantly enhanced by state administration, providing for grants to conduct investigation and cleanup of contaminated sites. Attorneys who can navigate the new free money application process undoubtedly will be popular with their clients.

DEM promulgated its Rules and Regulations for the Brownfields Remediation and Economic Development Fund last year. These outline the application process and project selection criteria for funding certain Brownfields projects; specifically, "the investigation, assessment, [and] remediation..." of contaminated properties.<sup>5</sup> Funds are and will be available for pre-development planning, remedial investigation, redevelopment and marketing plans, remedial design, construction of remedies, and associated work.

The new grant program does not change the site remediation process detailed in the DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations).<sup>6</sup> The new program simply makes funding available from the State

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for this cleanup. The trigger for any Brownfields remediation and, in turn, eligibility under the Grant Regulations, continues to be notification of a release of hazardous materials. The grant funds are only available for sites previously identified by DEM as a Brownfields site or new sites for which a notification of release has been submitted to the DEM.<sup>7</sup> Once under DEM's Remediation Regulations jurisdiction, any responsible party must adhere to the site remediation site management process.

At least twice per fiscal year, DEM will announce new rounds of funding. The announcement will state the amount of funds available and the application deadline. The application must be submitted on the application form supplied by DEM and electronic applications will also be acceptable.

The payment of the grant will be in the form of reimbursement. Grant recipients will be required to provide documentation of eligible expenses which will then be reimbursed by the DEM.

There are four categories for grants consideration: pre-development planning grants; redevelopment grants; site preparation grants; and small business assistance grants. The specific category definitions can be found in the Grant Regulations, but, generally, the difference between these categories is the status of the site in the remediation process. If the site was previously investigated and the DEM already approved a cleanup plan, the grant application falls into the redevelopment category. If the site has previous investigations, but no plans were approved by DEM, the funding category is pre-development. If the site is new to the site remediation process and needs initial investigation and assessment, it would likely fall into the site preparation category.

The grant money may be applied to investigation of soil, groundwater, soil gas, indoor air and infrastructure/building materials. Funds are also available for site assessment, remediation, hazardous material abatement, waste disposal, long term monitoring, institutional controls, environmental consulting costs, and marketing.

Applications for cleanup grants will be reviewed by a Review Committee comprised of three DEM employees and one other member from outside the DEM named by the DEM Director. The Review Committee will evaluate each application and award funding based upon various

criteria outlined in the Grant Regulations. Although the Regulations do not define the relative weights given to each review criteria, the relative economic development potential of the project will be given significant consideration. The Regulations refer to economic impact, job creation and enhanced tax revenues as factors for funding. How the Review Committee will analyze other stated review criteria such as the financial solvency of the developer, the permanency of the jobs created and the project's likelihood of success is left unanswered in the Grant Regulations.

The Grant Regulations are also silent as to whether the Review Committee may request that applicants supplement or explain their proposals. The Regulations do not state whether the Review Committee evaluation meetings are open to the public or whether the applicants are invited to attend.

After the Review Committee completes its scoring of the grant applications, the Committee submits its non-binding award recommendations to the DEM Director. The DEM Director may disregard the recommendations of the Review Committee and has sole authority to award grants.

The Grant Regulations also do not state whether the amount of funding requested in the application may be raised or lowered by the Review Committee or the DEM Director in the ultimate grant award. As to the amount of the awards, the Grant Regulations do not state whether the Review Committee or the DEM Director will apportion the total grant funding available in that period to among several applicants based upon the scoring or whether one application may receive the entire grant for that funding period. The Regulations do not explain whether the entire funding amount available in the award period will be disbursed in that period or whether the funds may be rolled back into the program for disbursement in a future grant period.

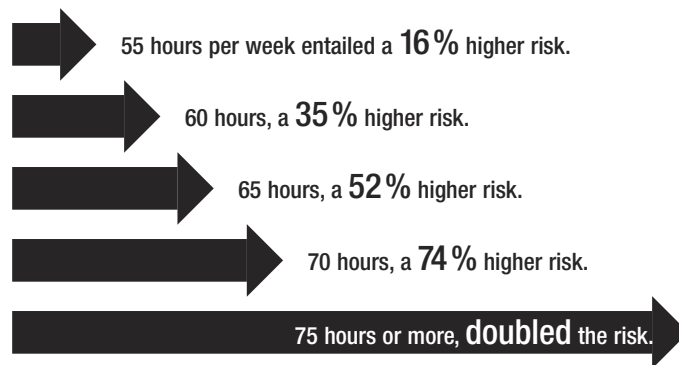
After the grant awards are announced, the applicants may request a debriefing with the Review Committee to discuss their application package scoring. The Grant Regulations do not provide for such a debriefing with the DEM Director if the Director overruled the Review Committee's recommendation. The request for this meeting must be made within thirty days of the award announcement and the meeting shall take place within ninety days.

Attorneys of applicants should take

## Working Too Much May Increase Risk of Cardiovascular Disease

Working long hours may increase your risk for cardiovascular disease. The *Wellness Letter* of the University of California School of Public Health recently reported on a study from the University of Texas which followed a representative sample of 1,926 initially healthy American workers for 25 years. As reported in the *Journal of Occupational and Environmental Medicine*, researchers found a relationship between average hours worked per week for at least 10 years and increasing risk of heart attack, stroke, hypertension, angina, and other cardiovascular events.

Compared to working 45 hours per week, working . . .



*The researchers controlled for age, sex, education, race/ethnicity, and pay status.*

Most, but not all, previous studies have also found an association between long work hours and increased cardiovascular risk. It's not known how the longer hours may boost the risk – perhaps by increasing stress, depression, or sleep problems, or by encouraging poor eating and exercise habits. Though the study did not evaluate this, if you work long hours by choice and like what you're doing, you're probably less likely to have adverse health effects. What's more, being involuntarily unemployed or underemployed is also linked with poorer health.

*Editor's Note: This health tip is brought to you as a service of the Rhode Island Bar Association's Lawyers Helping Lawyers (LHL) Committee. Please see page 6 for more information about the LHL Committee's sponsored services for Bar members and their families.*

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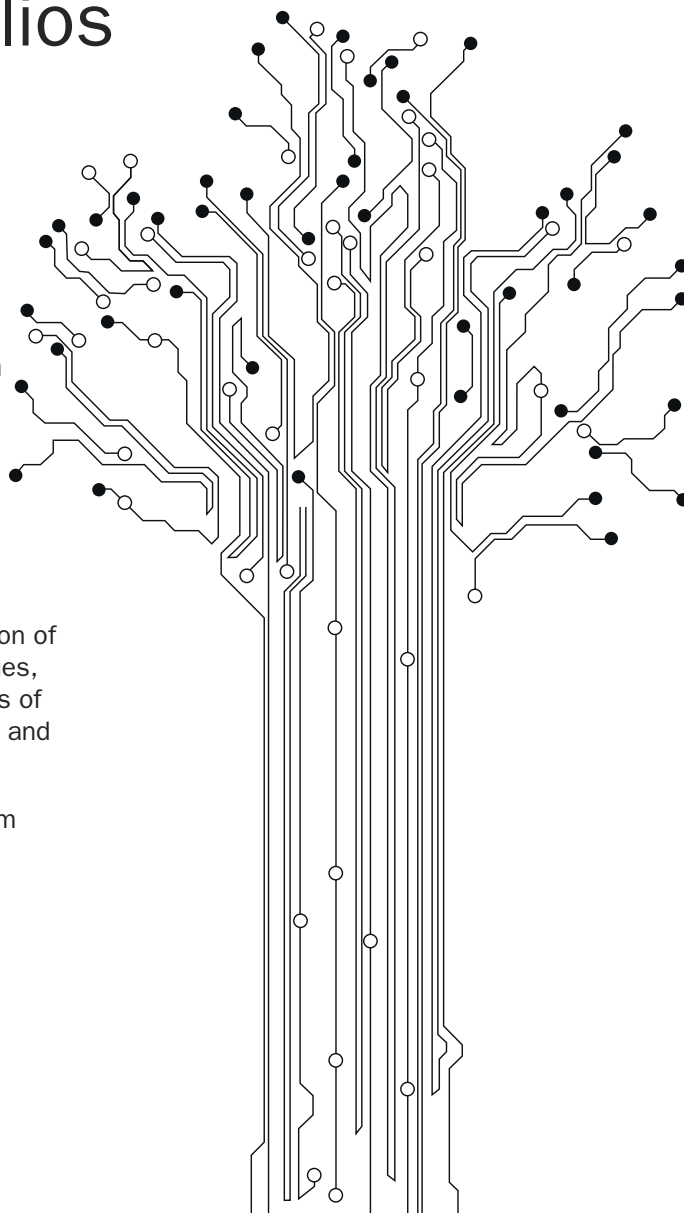
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advantage of this debriefing opportunity. The meeting will provide a look behind the curtain at the review process and will provide the attorney with valuable insight for the next application the attorney submits. It is uncertain whether denial of a grant application forms an appropriate basis for appeal, but the attorney may garner useful information for a litigation-minded client during the meeting with the Review Committee. For example, the Review Committee may disclose an application's high score such that the grant should have been awarded, but the DEM Director (with unfettered award authority) can overrule the Review Committee.

Upon the announcement of the remediation grant awards, successful applicants will receive a grant offer specifying the amount, duration and conditions of the award. The Grant Regulations do not explain how the duration of the offer will be defined by the DEM or whether there are any limitations on the conditions that may be included with the offer from DEM. The offer, however, will be in the form of a binding contract and the applicant must sign it within forty-five days of the offer being mailed by DEM.

The Brownfields grant program provides new and diverse opportunities for attorneys to assist their clients in the Brownfields process. Reviewing and filing the grant application, monitoring the Review Committee evaluation, participating in the debriefing, and documenting the eligible expenses for reimbursement are some of the steps in the grant program in which lawyers should play an active role. Lawyers who are able to guide their clients through the grant application process will undoubtedly be revered by the successful applicants. No attorneys should miss the chance to be revered at least once in their careers.

#### ENDNOTES

1 *Inexplicably, many people mispronounce "brownfields" as "brownsfield." The "s," however, is at the end of the word, not in the middle. If you say "brownsfield" during a meeting at DEM, you immediately will be branded a noob and shunned for the rest of the meeting.*

2 Section 1.00, RI DEM Rules and Regulations for the Brownfields Remediation and Economic Development Fund.

3 R.I. GEN. LAWS § 23-19.14-1 et seq.

4 Section 1.00 of DEM's Rules and Regulations for the Brownfields Remediation and Economic Development, September 22, 2015 ("Grant Regulations").

5 *Id.*

6 "Proposed projects must be on a Brownfields site known to [DEM]." Grant Regulations, Rule 10.01.

7 *Id.* ❖

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# Lunch with Legends: Trailblazers, Trendsetters and Treasures of the Rhode Island Bar



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Stephen Adams, Esq.

Ronald J. Resmini was born in Providence in 1942. He is a graduate of LaSalle Academy, and Providence College, where he majored in economics and participated in the Reserve Officer Training Corps (ROTC). Upon graduation from college, he was commissioned as an infantry officer and scheduled to deploy to Vietnam the following February. Despite his efforts, he could not go earlier, so he applied to graduate schools while awaiting his active duty assignment. He attended Suffolk University Law School and eventually applied for a deferment. Ron obtained his deferment, was promoted to first lieutenant, and finished law school in 1968. After law school, he served in active duty in both Fort Benning and Fort Devens, eventually reaching the rank of Captain. Toward the end of his active service, he met with two attorneys who had also served in the military, Paul Baillargeon and Gerry DeMaria, to seek advice on career paths. According to Resmini, both attorneys advised him to pursue a military career, rather than law. Following this advice, he sought a career commission, but was denied. So, he came back to Rhode Island and clerked for Rhode Island Supreme Court Associate Justice Powers. After his clerkship, he joined Coia & Lepore, but was politely told to “beat it” after a short period of time. Thereafter, he went into practice for himself with Bobby Colagiovanni and Jeff Fornaro, forming a firm that evolved into The Law Offices of Ronald J. Resmini where he continues to practice today with his three sons, Jason, Adam, and Andrew. He has built a prolific personal injury practice, obtaining numerous verdicts on behalf of his clients. In addition to his personal injury practice, he served as an adjunct professor, a offered CLE programs through the Bar Association, and published a volume of books on Rhode Island practice. We had the opportunity to sit with this veteran of the Rhode Island Bar. Excerpts from our conversation follow.



Ronald J. Resmini, Esq.

## *What was your most creative legal argument?*

Smith v. Keller Ladder. Falling from a ladder, my client had a busted nose and a fractured elbow. So a ladder expert from Illinois comes in. Big, tall guy. And he takes the stand, and says, “I think your client took the peen off the end of the rod [of the ladder] after he fell, you know, to look like it was a defect in the ladder.” This is where my ADD (attention deficit disorder) comes in. That night, at my home, I got an exemplar ladder. The real

ladder was in evidence. So I do my thing with the ladder at home. The guy is on the stand the next day. I said, “Why don’t you show us how to do that?” So he gets off the stand. He’s holding the peen, trying to turn the knob. And he said, “I can’t do it. I need a pair of pliers.” I said, “Really? Here you go. Here’s a pair of pliers.” I had a pair of pliers in my suit, which I tried the night before. He can’t do it. He said, “I need a wrench.” I said, “Oh, you need a wrench? Here’s a wrench.”

## *Who was your most formidable opponent?*

They’re all good. There’s nobody out there, I said, “Great. Oh, I can’t wait to get him again.”

## *Would you do it all over again?*

Absolutely.

## *What advice would you give to somebody who is just getting out of law school?*

You make certain sacrifices and try to do what’s good, and if you happen to get the awards you like to get, so be it. But if you don’t, you have the satisfaction of knowing that you’ve done something that can benefit society. You’ll always make enough money to do the major things in life. Have a lobster once in a while, go to Disney World with your kids, have an air conditioner, and have two toilets in your house. Other than that, the rest of it is irrelevant. It’s totally irrelevant.

## *To what do you attribute your success as a lawyer?*

No question about it. I became successful because I was afraid of failure. I never tried to be successful. I just tried not losing. Also, I’m very good at what I believe in. I’d suck if I wasn’t good at it. You could never put me in a position to do a job that I didn’t believe in. I wouldn’t be any good at it at all. When I lose a case and I go home at night to go to sleep, I sleep like a baby – I wake up every hour and cry! That’s what being a lawyer is like.

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## BOOK REVIEW

# *A Common Struggle*

by Patrick Kennedy and Stephen Fried



Nicholas Trott Long, Esq.  
Chair  
Lawyers Helping Lawyers  
Committee

***A Common Struggle* is a clear outline and persuasive argument for parity in the treatment of mental and physical illness and it is a compelling personal story of redemption and hope.**

Former Rhode Island First District Congressman Patrick Kennedy has scored a hat trick with *A Common Struggle*. It is a political junkie's dream, a clear outline and persuasive argument for parity in the treatment of mental and physical illness and it is a compelling personal story of redemption and hope.

Throughout, it also illustrates the overwhelming power of mental illness to destroy, particularly when the illness takes the form of addiction to alcohol or other mind altering drugs. *A Common Struggle* explains how obtaining effective treatment is often very difficult regardless of one's economic status due to the widespread stigma associated with mental illness, particularly, substance use disorders.

Kennedy's own family history reflects society's discomfort with mental illness. While in her twenties, his Aunt Rosemary was subjected to a lobotomy that left her extremely impaired, and

she spent virtually the rest of her life being cared for by a convent school and was never seen at family gatherings thereafter.

Patrick's parents also suffered from mental illness, but for decades, the extent and severity of their disease was denied. His mother, like her mother before her, suffered from debilitating alcoholism for most of her adult life. His father suffered the trauma of witnessing the deaths of his older brothers, as well as chronic back pain resulting from a plane crash when he was a young senator. The senator never received any professional help, but instead self-medicated, much of the time with alcohol. Alcohol and drug abuse have also plagued Patrick's brother and several cousins, one of whom died as a result.

Patrick went to his first alcohol and drug rehabilitation facility when he was a senior in high school. He also suffered from asthma, a tumor on his spine, bipolar disorder, and depression. He was treated by the foremost mental health professionals and, on so many occasions, he was an inpatient at the finest rehabilitation facilities that I lost count. While he experienced periods of sobriety and reasonable mental health,

as of April 2016, the 48 year old has been drug and alcohol free for only four and a half years.

Despite his impairments, Patrick was a very effective member of congress. His signal achievement was gaining the passage of the Mental Health Parity and Addiction Equity Act law requiring healthcare providers and insurance companies to provide the same level of benefits for mental and/or substance use treatment and services as they do for medical/surgical care.

The most compelling element of the book is the romantic tale of Patrick's meeting his wife Amy and her parents and how they successfully helped him to finally achieve mental health.

Since he left Congress, Patrick has created two organizations devoted to the promotion of mental health, *The Kennedy Forum* and *One Mind*, described in the book's useful appendices that also contain additional information on a variety of helpful and informative resources.

EDITOR'S NOTE: For information about how the Rhode Island Bar Association provides Bar members and their families with assistance for substance abuse and other mental health issues, please see the Lawyers Helping Lawyers Committee notice on page 6 of this *Bar Journal*. ❖

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# Amended Certification of Compliance with Registration Requirements



Sharon A. Santilli, Esq.  
RI Child Support Director

On June 27, 2016, Chief Judge of the Rhode Island Family Court Michael J. Forte signed Administrative Order 2016-02, *Certification of Compliance with Registration Requirements*, which amends the requirements of the previous administrative order. The Department of Human Services, Office of Child Support Services (OCSS) requested changes to the CSS1 form and instructions to comply with federally-mandated requirements. The effective date of the Administrative order is July 1, 2016. The following information highlights the purpose of, and the detailed changes in, the CSS1 form and instructions.

## **Purpose of Administrative Order 2016-01**

Pursuant to R.I. Gen. Laws 15-5-16.2(h), all child support orders established or modified on or after October 1, 1998, shall be recorded with the computer system, shared by the RI Department of Human Services Office of Child Support Services and the RI Family Court as the official state case registry. Recording is required regardless of whether the case in question is given a status of bookkeeping only or full service with the Office of Child Support Services. The custodial parent/obligee's attorney, or the custodial parent/obligee, is required to submit a complete and accurate CSS1 form to register the order immediately after the Court hearing.

Accordingly, the CSS1 form provides a mechanism for child support orders to be recorded and/or payments made through the State Disbursement Unit (SDU). If the Court orders the obligor or non-custodial parent to pay a weekly child support order, and/or a cash or arrears order by income withholding, and the custodial parent chooses either bookkeeping only or full service, the Judgement/Order alone is insufficient to codify that order on the Child Support case registry. If the CSS1 form is not completed, even in a bookkeeping only case, where the custodial parent/obligee does not want the services of the child support agency, the child support order has not been recorded, and, therefore, the payment cannot be posted to the correct account and will not be distributed to the custodial par-

ent/obligee. The majority of complaints the OCSS receives result from the CSS1 form not being completed properly or not submitted at all. Therefore, the custodial parent cannot receive the child support being paid through the SDU. In those cases, the custodial parent will be referred back to the private attorney to submit the CSS1 form.

## **There are four types of cases for which a CSS1 form must be completed.**

First, a CSS1 form must be completed and submitted in a case where a *registration of the order* is for informational purposes only. This is required when the payments are not payable through the RI Family Court, but the case is required to be registered in the event the case becomes a IV-D or child support case in the future. This can only be checked off if public benefits are *not* being received.

To clarify, a IV-D case is so named because the child support program is governed under the laws of Title IV-D of the Social Security Act. IV-D cases are cases referred by the: DHS RIWorks program (cash assistance) and the recipients have assigned their rights to collect child support by operation of law; the Medicaid program; or any non-welfare applicant who applies for services, completes an application and pays a \$20 fee.

The second type of case for which a CSS1 form must be completed and submitted is a case that is bookkeeping only where the Court orders that the child support is payable through the SDU by income withholding, but the IV-D agency or Office of Child Support Services will not be providing any services or enforcing the order on behalf of the custodial parent. The role of the agency in a bookkeeping only case is simply to assure the payments are posted correctly and appropriately distributed per federal regulations. In these cases, the obligee declines the services of OCSS.

The third type of case for which a CSS1 must be completed and submitted is in the medical only case. The children receive state medical benefits, and the custodial parent has the option of accepting full service for the child support order or medical services only. If the case is for

**Attorneys should inform their clients about the CSS1 purpose, the requirement to complete and submit the form, and discuss whether the client would like full service or bookkeeping only service.**

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medical only, just the cash medical order will be payable through the SDU by an income withholding order or the health coverage provision will be ordered and recorded.

The fourth type of case is the full service case. If the court orders child support payable through the SDU by income withholding *and* the obligee would like the OCSS to enforce the order on his/her behalf, the custodial parent must select full service on the CSS1 form. If the custodial parent is receiving RIWorks benefits, the custodial parent must accept full services.

## What Has Changed On The CSS1 Form?

1. The most significant change to the form are questions regarding the paternity of each child. The federal government requires OCSS to capture paternity information for every child on its system; specifically, whether the child was born during the course of a marriage or within 300 days of termination of a marriage either by divorce or death; or otherwise born out of wedlock. If the child was born during the course of a marriage, the law presumes the husband is the legal father of the child. If the court order excludes the husband as the father, a copy of that order excluding him is required to enable OCSS to then pursue the biological father. This information must be captured on every case including those cases simply being registered as described above. The following questions have been added to this form to capture this information:
  - Was the child born of marriage or within 300 days of termination of the marriage?
  - Name of the husband,
  - Date of marriage and divorce,
  - Was the former husband excluded as the father? If so, the docket number of order and a copy of order.
2. A requirement that if the custodial parent/obligee is requesting the full services of the OCSS, they must now complete an application that may be obtained on line at [www.cse.ri.gov](http://www.cse.ri.gov). A \$20 check, made payable to the OCSS, must be received with the application before OCSS begins processing the application. The application must be fully completed with all accurate and complete infor-



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mation. If incomplete, it will be returned to the attorney and/or custodial parent/obligee. This applies even if the case began as a book-keeping only case and the custodial parent later requests full service. The case will not be coded full service until the application is received with all accurate and complete information.

3. Additional information for future methods of contact – OCSS is requesting the email address of the parties and attorneys; so we can reach out in the future through other modes of communication.
4. Declaration of Party – By signing the CSS1 and the application, obligee agrees to abide by all federal and state laws of collection and distribution of payments and agrees further to repay funds disbursed in error. The person agrees further to receive support payments via the Kids Card debit card. Payment cannot be disbursed without this signed declaration.

#### **Ramifications for Failure to Provide a Complete CSS1**

If, during a contested divorce hearing, the court enters an order of support, or modifies the order in any way, the CSS1 form should be submitted with the new or modified order information. Failure to submit the CSS1 form will prevent the order from being entered on the system and prevent payments from posting to the correct account and distributing to the custodial parent via the Kids Card debit card.

If, during a private hearing, the arrears are adjudicated, and the adjusted arrears are different than what is reflected on the official computer system, and the case is full service, enforcement of that order will occur in an automated and simultaneous fashion. Automated enforcement actions may include: driver's license suspension; credit bureau reporting; bank liens; insurance settlement liens; lottery intercept; passport denial; and administrative offset to name a few. So, the ramifications may be significant for the obligor. If the court adjudicates the arrears at zero, because the obligor has paid the custodial parent directly, and the system is unaware of that direct pay, the system will reflect the arrears as is and enforcement will occur.

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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.

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Questions? Please contact Virginia Caldwell at 421-6541  
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### Summary

Private attorneys should inform their clients about the CSS1 purpose, the requirement to complete and submit the form, and discuss whether the client would like full service or bookkeeping only service. They should place the new CSS1 form on their personal computers with other required domestic forms. The CSS1 form should be completed and submitted immediately after any hearing where the court has: ordered a new child support order; modified child support in amount, frequency or in any other way; has added an arrears order; or has adjudicated arrears. The sooner Family Court or OCSS receives the CSS1 form, the sooner the order will be posted and payments can be received and processed properly. A CSS1 form should be prepared in advance and brought to the hearing to be submitted to the Court's Reciprocal/Collections Office that day. If a client is requesting full services they should also be instructed to complete a child support application for services and submit it with a \$20 application fee simultaneously with the filing of the CSS1. OCSS cannot complete the CSS1 on behalf of the customer. ❖

### Seeking Law-Related Education Program Attorney Volunteers!

Your Bar Association supports law-related education (LRE) for Rhode Island children and adults through three, longstanding programs: *Lawyers in the Classroom* and *Rhode Island Law Day* for upper and middle school teachers and students, and the *Speakers Bureau* for adult organizations. Responding to LRE requests, Bar volunteers are contacted – based on their geographic location and noted areas of legal interest – to determine their interest and availability.

If you are interested in serving as a LRE volunteer, please go to the Bar's website at [ribar.com](http://ribar.com), click on **FOR ATTORNEYS**, click on **LAW RELATED EDUCATION**, click on **ATTORNEY ONLY LRE APPLICATION**. All Bar members interested in serving as LRE volunteers, now and in the future, *must* sign-up this year, as we are refreshing our database.

Questions? Please contact: Frederick D. Massie, Director of Communications or Kathleen Bridge, Assistant Director of Communications at: **401-421-5740**.

# Medical Expense Deduction Percentage Aging Out



Marc J. Soss, Esq.  
Practices in Florida

**Taxpayers over age 65 need to take advantage of the lower medical expense deduction in 2016 before it is gone.**

Most income taxpayers are aware that they can claim a deduction, on Schedule A, for medical and/or dental expense incurred during the year on their Federal Income Tax Return. The deduction applies to expenses incurred by your spouse, dependents and you. The Internal Revenue Service defines medical expenses as “payments for the diagnosis, cure, mitigation, treatment, or prevention of disease, or payments for treatments affecting any structure or function of the body.” This includes payments made to “doctors, dentists, surgeons, chiropractors, psychiatrists, psychologists, and nontraditional medical practitioners” and for in-patient hospital care or residential nursing home care, including the cost of meals and lodging charged by the hospital

or nursing home, in-patient rehabilitation treatment (drugs, alcohol, etc.), weight-loss program (restrictions apply), and for prescription drugs, reading or prescription eyeglasses or contact lenses, hearing aids, crutches, wheelchairs, and for guide dogs for the blind or deaf. The deduction also includes the payment of insurance policy premiums, including long-term care services.

However, the deduction is not available to everyone as eligibility requires: i) the taxpayer to itemize their income tax deductions (medical expenses, charitable deductions, certain taxes paid and home-related costs) and not claim a standard deduction (itemized expenses must exceed the standard deduction amount); and ii) medical costs that exceed a percentage of the taxpayer’s adjusted gross income (AGI). In tax year 2016, the medical expense deduction is available to taxpayers under age 65 who have medical costs that exceed ten (10%) percent of their AGI. Taxpayers over age 65 are eligible to utilize the medical expense deduction if their medical costs exceed seven and one-half percent of their AGI.

It is important to note that 2016 is the last tax year the lower percentage will be available to taxpayers over the age of 65 years. Beginning on January 1, 2017, unless legislation is passed, the percentage will revert back to ten percent for all taxpayers. So, if you are over age 65, and you, a spouse or dependent family member are contemplating an expensive medical procedure it would be best to have it take place in 2016 to utilize the lower eligibility requirement. ♦

The Rhode Island Bar Association’s free, web-based, online Attorney Directory provides an excellent means for your colleagues and clients to quickly connect with you.

Searchable by last name, first name or both, your Bar’s online Attorney Directory serves as an easy means for you to communicate with your colleagues, and for clients and potential clients to connect with you. Attorney Directory contact information may include the Bar member’s name, photograph, law office name, postal address, email address, telephone number, and facsimile number. And, email addresses are live, so simply clicking on a Directory email address creates a pre-addressed communication.

Access is easy through the **Attorney Directory** button at the top of the Rhode Island Bar Association’s web site Home page at [ribar.com](http://ribar.com). Bar members may update their information directly, online, via the **Members Only** feature on upper right corner of the Bar’s website Home page. After logging in using your user name and password, you may click on the **Member Maintenance** button and update your information. This automatically updates both the Bar’s secure and private database for home contact information and populates the publically-accessible, business-information-only online Attorney Directory. As an alternative, Bar members may provide address or other contact changes by connecting with the Rhode Island Bar Association’s Office Manager Susan Cavalloro by email: [scavalloro@ribar.com](mailto:scavalloro@ribar.com) or telephone: 401-421-5740. Attorney Directory photographs must be emailed to Ms. Cavalloro, provided in a jpg format of no smaller than 300 dpi.

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**September 13** **Starting Over: Learning to Find the Passion in Your Life & Your Practice**  
*Tuesday*  
Rhodes-on-the-Pawtuxet, Cranston  
5:30 p.m. – 7:30 p.m., 2.0 ethics credits

**September 14** **Starting Over: Learning to Find the Passion in Your Life & Your Practice**  
*Wednesday*  
Rhodes-on-the-Pawtuxet, Cranston  
2:00 p.m. – 4:00 p.m., 2.0 ethics credits

**September 15** **Starting Over: Learning to Find the Passion in Your Life & Your Practice**  
*Thursday*  
Rhodes-on-the-Pawtuxet, Cranston  
9:00 a.m. – 11:00 a.m., 2.0 ethics credits

**September 22** **Food for Thought**  
*Thursday*  
**Ethics in Domestic Cases**  
RI Law Center, Cranston  
12:45 p.m. – 1:45 p.m., 1.0 ethics credit  
*Also available as a LIVE WEBCAST*

**September 26** **Commercial Law Update – 2016**  
*Monday*  
RI Law Center, Cranston  
9:00 a.m. – 1:00 p.m.  
4.0 credits, including .5 ethics

**October 13** **Food for Thought**  
*Thursday*  
**Best & Worst Practice by IRS Revenue Agents & Representatives in the IRS Examination Process**  
RI Law Center, Cranston  
12:45 p.m. – 1:45 p.m., 1.0 credit

**October 18** **Food for Thought**  
*Tuesday*  
**Best & Worst Practice by IRS Revenue Agents & Representatives in the IRS Examination Process**  
Phil's Main Street Grille, Wakefield  
12:45 p.m. – 1:45 p.m., 1.0 credit

**October 20** **Food for Thought**  
*Thursday*  
**Guardians Ad Litem**  
RI Law Center, Cranston  
12:45 p.m. – 1:45 p.m., 1.0 credit  
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**October 21** **How to Try a DUI/Refusal Case**  
*Friday*  
RI Law Center, Cranston  
1:00 p.m. – 3:00 p.m., 2.0 credits

**October 27** **Food for Thought**  
*Thursday*  
**ERISA Update**  
RI Law Center, Cranston  
12:45 p.m. – 1:45 p.m., 1.0 credit  
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**October 28** **Judicial Foreclosures: The Next Wave??**  
*Friday*  
*(Sponsored by the Foreclosure Prevention Project in conjunction with the Volunteer Lawyer Program)*  
RI Law Center, Cranston  
12:00 p.m. – 3:00 pm, 3.0 credits

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**November 1** **Recent Developments in the Law – 2016**  
*Tuesday*  
Crowne Plaza Hotel, Warwick  
9:00 a.m. – 4:30 p.m.  
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## 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](http://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](mailto:hmcDonald@ribar.com) or 401.421.5740.

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Richard E. Kyte, Jr., Esq., *Mapleville*

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The Bar also thanks the following volunteers for taking cases for the Foreclosure Prevention Project and for participating in Ask A Lawyer and Legal Clinic events during June and July.

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For information and to join a Bar *pro bono* program, please contact the Bar's Public Services Director Susan Fontaine at: [sfontaine@ribar.com](mailto:sfontaine@ribar.com) or 401-421-7758.

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## Lawyers on the Move

**Susan Leach DeBlasio, Esq.** received the Jewish Alliance of Greater Rhode Island's annual Joseph W. Ress Community Service Award, recognizing an individual demonstrating exemplary leadership at the Alliance, local or national Jewish agencies, and the Rhode Island community.

**Robert G. Flanders, Jr., Esq.** is now a partner and the law firm's name changed to reflect his position at **Whelan, Corrente, Flanders, Kinder and Siket, LLP**, 100 Westminster Street, Suite 710, Providence, RI 02903.  
401-270-4500  
rflanders@whelancorrente.com

**William K. Wray, Jr., Esq.** is now an associate at **Duffy & Sweeney**, 1800 Financial Plaza, Providence, RI 02903.  
401-455-0700  
wwray@duffysweeney.com

## Defense Council of Rhode Island Elects New Officers, Honors Court Clerk

At its Annual Meeting, the Defense Council of Rhode Island (DCRI), the state association of attorneys defending the interests of business and individuals in civil litigation, elected new officers including President John F. Kelleher, Esq., President-Elect Lauren D. Wilkins, Esq., Vice President William F. White, Esq., Secretary Rebecca McSweeney, Esq. and Treasurer Amy Beretta, Esq. DCRI also honored Rhode Island Superior Court Deputy Clerk Michael C. Rampone.



(l-r) Rhode Island Superior Court Associate Justice Richard A. Licht, DCRI Young Lawyers Division Co-Chair Kristina I. Hultman, Esq., RI Superior Court Deputy Clerk Michael C. Rampone and DCRI President John F. Kelleher, Esq.

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## Financial Town Meetings

*continued from page 9*

Accordingly, an FTM is restricted to considering the budget and cannot exercise the general powers of the town.

The FTM does not have the authority to place conditions on appropriations the town makes to local schools, as it may for other appropriations. The R.I. Supreme Court has long interpreted the general laws vesting “the entire care, control, and management of all the public school interests” in the local school committee to prohibit meddling by the FTM in how school funds are allocated.<sup>19</sup> For instance, in *Bailey v. Duffy*, 121 A. 129 (R.I. 1923), the West Warwick FTM attempted to place a condition on its school appropriation that would regulate the salary of school janitors. The Court ruled that, because § 16-2-18 vested authority of school affairs in school committees, the FTM had no authority to regulate the salary of school janitors and the condition on the appropriation was invalid and unenforceable.

The FTM must appropriate sufficient funds to pay for contracts legally binding on the town, or for other expenses mandated by state law. For instance, in *Exeter-West Greenwich Regional Sch. Dist. v. Exeter-West Greenwich Teachers Ass., et al.*, 489 A.2d 1010 (R.I. 1985), the local FTM did not appropriate sufficient funds to pay the collective bargaining contract entered into by the local school committee. The court ruled that the school committee had the authority to bind the town by entering into such a contract and, since the town was contractually bound, “the community is bound to fund that agreement through its appropriating authority, whether that authority is the city or town council, a financial town meeting, or a district financial meeting.”<sup>20</sup> This limitation placed on the FTM will prevent it from altering the salary of most union employees. However, there are many employees in town government that serve at will, such as the police chief in *Herbert*, *supra*. Also, the FTM would be able to affect even union employee compensation, if there is no valid collective bargaining agreement in place at the time of the FTM.<sup>21</sup>

### Are Financial Town Meetings Good Governance?

The FTM is somewhat of an anachro-



## Chisholm Chisholm & Kilpatrick Congratulates Attorney Barbara J. Cook

Chisholm Chisholm & Kilpatrick, a Providence based litigation firm with a national practice in Veterans and ERISA disability law, is pleased to announce that, Barbara J. Cook has been named a partner.

Cook is a cum laude graduate of the University of Michigan School of Law, and is a talented and seasoned litigator who brings to CCK a diverse and valuable experience representing individuals. Cook is also nationally recognized as leading litigation attorney for disabled veterans. She has represented more than 1000 disabled veterans in the U.S. federal courts, including veterans of World War II, Vietnam, the Korean War, the Gulf War, and the wars in Iraq and Afghanistan.



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## Rhode Island Probate Court Listing on Bar's Website

The Rhode Island Bar Association regularly updates the Rhode Island Probate Court Listing to ensure posted information is correct. The Probate Court Listing is available on the Bar's website at [ribar.com](http://ribar.com) by clicking on **FOR ATTORNEYS** on the Home page menu and then clicking on **PROBATE COURT INFORMATION** on the drop-down menu. The Listing is provided in a downloadable pdf format. Bar members may also increase the type size of the words on the Listing by using the percentage feature at the top of the page.

nism in Rhode Island municipal government. Since the Rhode Island constitution no longer limits town financial matters to taxing and property owning voters, the original purpose of the FTM no longer exists. Therefore, Rhode Islanders should consider whether the FTM is still an appropriate means for democratic participation in a town's financial affairs. Recent data collected by the State calls the continued viability of the FTM into question. In 2012, of the towns with an FTM, the average voter turnout to an FTM was 1.2% of the eligible voters in the town. Only Little Compton and New Shoreham, the two smallest towns in R.I.,<sup>22</sup> had more than 5% of eligible voters turnout for the 2012 FTM.<sup>23</sup>

Low voter turnout at an FTM is understandable for several reasons. In a normal election, polls are open for most of the day, in multiple places throughout the town, and people who cannot make the polls on that day can vote by mail ballot ahead of time.<sup>24</sup> In contrast, the FTM takes place at one particular time at one particular place on one particular day. The only way to vote in an FTM is in person at the meeting, often by voice vote or show of hands. This makes attendance difficult, *e.g.*, for a parent of young children or for a person who cannot get time off of work. Further, because of the lack of specific notice requirements, it is difficult for the average voter to determine whether he or she should make the time to attend the FTM. Often, the FTM will fail to take action due to lack of a quorum or, if a quorum is present, will resolve quickly by a routine vote to approve the budget as submitted. On the other hand, on some occasions, without any forewarning, a vote may come from the floor of the FTM to drastically increase and/or decrease the funding for particular municipal salaries, departments, projects, or savings. Due to the low voter turnout at FTMs, it may be fairly easy for a special interest group, whose fiscal philosophy may not reflect the majority opinion of the townspeople, to hijack a town budget by packing a meeting and making surprise amendments on the floor. This makes the FTM an unwieldy and often unpredictable form of governance.

Between 1950 and 2011, 15 of Rhode Island's 31 towns abandoned the FTM. Because of the low voter turnout and the excessive, sometimes capricious, power that can be exercised by the few who

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## In Memoriam

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### **William Y. Chaika, Esq.**

William Y. Chaika, 79, passed away on July 24, 2016. He was the beloved husband of the late Elaine Ostrach Chaika. Born in New York, NY, a son of the late Sol and Mildred Cohen Chaika, he lived in RI since the early 1950s. William was a founding partner of the law firm of Chaika & Chaika, retiring in 2011 after 50 years in practice. He was a past master of Roosevelt Lodge of the Masons and an avid pool player. He is survived by his sons Eric Chaika of Warwick and Daniel Chaika of Providence, and his sister Barbara Reich of Plymouth, MA.

do show up to the FTM, perhaps Rhode Island's remaining 16 towns should consider the same. The town meeting has a long history of egalitarian democracy in New England and is a quintessential part of New England culture. However, the FTM in Rhode Island stems not from a history of inclusive participatory democracy, but, instead, developed as a means to exclude certain voters from voting on certain matters. Most Rhode Island towns have abandoned the general town meeting as a form of modern municipal governance. These same towns should take a second look to determine if it is time to abandon the FTM as well.

#### ENDNOTES

- 1 See Patrick T. Conley & Robert G. Flanders, Jr., *THE RHODE ISLAND STATE CONSTITUTION: A REFERENCE GUIDE*.
- 2 See Henry David Thoreau, "Slavery in Massachusetts," available at [http://www.transcendentalists.com/slavery\\_in\\_ma.htm](http://www.transcendentalists.com/slavery_in_ma.htm).
- 3 See "State Community Profiles," published by RI Economic Development Corporation, now CommerceRI.
- 4 See *State v. Glennon*, 3 R.I. 276, 278 (1856).
- 5 See generally R.I. Const. Art. XIII
- 6 See *Municipal Charters in Rhode Island*, available at [http://www.municipalfinance.ri.gov/documents/resources/Home\\_Rule\\_Charter\\_Publication.pdf](http://www.municipalfinance.ri.gov/documents/resources/Home_Rule_Charter_Publication.pdf).
- 7 See *Rhode Island City & Town Resident Population from Census 2010*, available at <http://www.dlt.ri.gov/lmi/census/pop/townpop.htm>
- 8 See Joseph E. Coduri, *Rhode Island Division of Municipal Finance, Financial Town Meetings in Rhode Island*, available at <http://www.municipalfinance.ri.gov/documents/resources/Financial%20Town%20Meetings%202013.pdf>.
- 9 See Conley & Flanders, *supra*.
- 10 *Id.*
- 11 See *H. P. Cornell Co. v. Barber*, 76 A. 801, 817 (R.I. 1910) (Blodgett, J., dissenting).
- 12 See *Carr*, 75 A. at 489.
- 13 See *Mageau v. Wedlock*, 505 A.2d 414, 417 (R.I. 1986).
- 14 *Id.* at 416.
- 15 *Id.*
- 16 *Herbert*, 121 A. at 130.
- 17 See *Pine v. McGreavy*, 687 A.2d 1244 (R.I. 1997).
- 18 See *Mageau*, *supra*.
- 19 See R.I. GEN. LAWS 1956 § 16-2-18.
- 20 See *Exeter-West Greenwich Regional Sch. Dist.*, *supra*.
- 21 See *Lime Rock Fire Dist. v. Rhode Island State Labor Relations Bd.*, 673 A.2d 51 (R.I. 1996).
- 22 See *Rhode Island City & Town Resident Population from Census 2010*, *supra*.
- 23 See *Financial Town Meetings in Rhode Island*, *supra*.
- 24 See <http://sos.ri.gov/elections/> for more information. ❖

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