

2015 MSBA Annual Meeting

**Samoset Resort, Rockport
January 22 & 23, 2015**



Maine State Bar
ASSOCIATION

Thursday, January 22

7:30-8:30 **Continental Breakfast**
Section Business Meetings: *Municipal Law, Women's Law*

8:30-9:00 **MSBA Annual Business Meeting**

9:00-10:00 **Plenary Session** (1.0 ethics credit)

1. Finding The Right Home For Orphan Funds

An issue percolating for many years involves the disposition of abandoned and unaccounted-for funds in IOLTA accounts, also known as "orphan funds." What happens when a client has received a financial settlement, but cannot be found despite vigorous efforts by the attorney to locate him or her? What should the attorney do when funds in IOLTA accounts cannot be tied to a client? There is confusion about answers to these questions, not only here in Maine but in much of the country. At present, some Maine law firms send orphan funds to the state treasurer as abandoned property, some send these funds to the Maine Bar Foundation to be used to support civil legal aid, and some hold on to these funds. Since Maine is the oldest state in the nation by median age, the disposition of orphan funds is likely to become even more urgent as more attorneys retire and those holding orphan funds finally will have to figure out what to do. What actions have other states have taken to resolve this issue? What are possible solutions here in Maine?

Barbara A. Cardone, Esq., Hon. Andrew M. Mead, and Diana C. Scully

10:00-10:30 **Sponsor Break**

10:30-11:30 **Concurrent Sessions** (1.0 CLE credit)

2. Access To Civil Justice For Consumers In Financial Distress

A substantial percentage of Americans are in financial distress, presenting conditions such as high debt levels, low income and low savings, and in many instances, accounts "in collection." Research suggests that financial distress causes lower mental function, leading to compromised decisions that in turn lead to other legal problems, including eviction, divorce, and a need for government benefits. The pervasiveness of financial distress has put a premium on answering the following question: What works to improve the financial health of those whose struggle to meet their financial obligations? This panel will discuss a research study, taking place in Maine, that will rigorously examine the problems financially distressed consumers are facing and test a variety of solutions in an effort to discover "what works." One such "solution" is the development of accessible self-help materials to be used by consumers in Maine courts.

Barbara C. Schneider (Moderator), Hon. Peter G. Cary, Nan Heald, Esq., Hon. Charles C. LaVerdiere, and Lois R. Lupica, Esq.

3. The Practical Application Of Ethical Obligations To Information Security & Privacy (*includes 0.5 ethics credit*)

Ethics opinions suggest that attorneys generally need to take reasonable steps to provide information security and protect the confidentiality of client information. But what exactly are the steps to be taken? How does an attorney skilled in so many things know what is "edge of reasonable" in the arcane world of cyber security? This session will address practical steps that every attorney in Maine should take to ensure the security and privacy of information under their control. Ethics guidance in Maine and elsewhere will be tied to typical scenarios of the small practitioner with little or no IT infrastructure, larger firms relying on managed

services, or internal IT teams for their own their own servers and networks. The session will also address cutting edge issues arising from the cloud and “bring-your-own-device” service models.

Ande A. Smith, Esq.

4. Advising Employers On I-9 Compliance & Audits

While Congress and the president square off on immigration reform, the Department of Homeland Security continues to audit employers to ensure compliance with I-9 requirements. Even with the best of intentions, many employers may feel unfairly burdened—particularly multistate employers contending with supplemental state law requirements. This presentation will give an overview of the I-9 requirements, highlighting common employer mistakes, recordkeeping best practices, and recommendations for advising clients in both internal and Homeland Security audits.

Michael S. Malloy, Esq.

5. Roadmap To Risk Assessment In Domestic Violence Cases: New Tool Mandated For 2015

On January 1, 2015, the ODARA Risk Assessment tool will become part of the Coordinated Community Response to Domestic Violence in Maine. This session will outline the recent law changes mandating the use of ODARA in criminal domestic violence cases; why risk assessment is being used in domestic violence cases; how the ODARA tool was developed and its use implemented in Maine; and how the results of the assessment are interpreted. In addition, community response to high-risk cases across Maine will also be discussed.

Margo Batsie and Faye E. Luppi, Esq.

11:30-11:45 Break

11:45-12:45 Concurrent Sessions (1.0 CLE credit)

6. Effective Courtroom Communication: How Not To Frustrate Your Judge

Experienced judges and trial lawyers will discuss how judges and trial counsel can communicate most effectively, particularly in difficult cases, and how lawyers can avoid frustrating their judge and avoid unnecessary conflicts with opposing counsel before the bench. We anticipate a Socratic dialogue with attendee participation.

Hon. Peter G. Cary, Robert P. Cummins, Esq., Peter J. DeTroy III, Esq., Paul McDonald, Esq., and Hon. John H. O'Neil Jr.

7. Balancing Data Security & Leveraging Of Time Through Technology

Given the always present pressure to be efficient and leverage our time, lawyers often turn to the latest, time-saving technologies. As these technologies evolve in this era of “Big Data,” however, lawyers need to be aware of how the technologies they employ process data, including who has access to the data after it leaves one’s computer or other device. This session will cover this topic generally, but will also focus on certain relatively ubiquitous platforms and applications, such as Siri, Google Docs, Gmail, and Dropbox, and will include a discussion of the security of the information passing through these systems and whether use of these technologies comport (or have the potential to comport, with safeguards) with the ethical obligations of Maine attorneys to maintain confidentiality and comply with other data security obligations such as HIPAA.

Teresa M. Cloutier, Esq.

8. How To Avoid Being Sued For Legal Malpractice (1.0 ethics credit)

A lawsuit for legal malpractice, even if successfully defended, damages a lawyer and the law firm in many ways. Even with insurance, a lawsuit is costly to defend. The suit damages the lawyer's self-confidence and ability to concentrate on work. The reputation of the lawyer and the firm are tainted, both in public and among the bench and bar. This presentation will explore why lawyers get sued, and how such suits can be avoided.

John S. Whitman, Esq.

9. Residential Construction Cases: A Practical Primer On How To Prepare And Manage Your Case For Successful Resolution At Mediation

Residential construction cases are legally complex, fact-intensive and difficult to resolve before incurring legal expenses that can exceed the amount in controversy. Multiple legal theories provide for a variety of different remedies and defenses. Insurance coverage is often limited and disputed. Experts are typically needed to address issues of the quality of work, cause of damage, and methods and costs of repair. Subcontractor involvement results in multiple parties and attorneys. Effective representation of home owners and contractors often requires case management designed to achieve cost-effective resolution at mediation. You'll hear from the perspectives of the litigator and mediator about how to prepare and present your case to achieve the best settlement for your client, while managing their expectations and costs. Common legal problems involving statutory remedies and attorney's fees, statute of limitations, mechanic's liens, insurance coverage, breach of warranty/right to cure, measure of damages, and more will be addressed. Using actual case examples and role playing, the presenters will share their experiences on what works and what doesn't and how to navigate the interplay of these issues to a successful resolution.

Thomas R. McKeon, Esq. and Peter Schroeter, Esq.

12:45-2:00

Lunch

2:00-3:15

Concurrent Sessions (1.25 CLE credits)

10. Don't Be Scared. Bankruptcy Is Not A Four Letter Word: How To Identify When Bankruptcy May Be A Helpful Tool In Estate Planning, Litigation, Commercial Transactions or Divorce Proceedings

You're meeting with a client to discuss a personal injury claim or maybe a particularly contentious divorce. Yes, the client has debts, but doesn't everyone have some amount of debt? How do you determine whether bankruptcy may be a good option to truly help the client move forward? How can you use a possible bankruptcy filing to structure a settlement? The panel will provide an overview of the four most common types of bankruptcy, including who qualifies as a debtor and the major differences between the relief afforded. There will be particular attention on the bankruptcy process including the creation of the bankruptcy estate, the impact of the automatic stay, retention and compensation of professionals providing services to a debtor during the case, and the timing and effect of discharge. The issues most impacting the timing of a filing, including tax considerations, divorce proceedings, contractual issues, seasonal income fluctuations, among others, will also be discussed. The goal of the panel is to assist attorneys not already familiar with the bankruptcy process gain an awareness of when a bankruptcy may be another tool in their toolbox in representing their clients.

Darcie P. L. Beaudin, Esq., Hon. Peter G. Cary, Jessica A. Lewis, Esq., Jennifer H. Pincus, Esq., and Tanya Sambatakos, Esq.

11. Working With The Impaired Client (1.25 ethics credits)

Representing a client whose cognition is impaired as a result of substance abuse or mental illness presents a number of special challenges. Understanding the nature of these conditions can enable attorneys to communicate more effectively with impaired clients and even assist them in obtaining appropriate treatment. This seminar will examine the neurobiology of addiction and mental illness; the ethical issues involved in representing impaired clients; effective communication strategies; and various resources that are available

William C. Nugent, Esq. and Pamela Knowles Lawrason, Esq.

12. Maine Arbitration In 2015: Where We've Been, Where We're Going

Four experienced litigator-arbitrators will describe the history and future of arbitration in Maine, including:

- update of recent case law regarding arbitration and arbitrability;
- pros and cons of arbitration versus other dispute-resolution techniques;
- drafting arbitration clauses;
- differences in tactics and strategies between arbitration hearings and court trials; and
- standards of review on appeal.

George F. Burns, Esq., Eugene C. Coughlin III, Esq., Elizabeth A. Germani, Esq., and Jotham D. Pierce Jr., Esq.

13. Know When To Engage In Email Exchanges & When To Say "Uncle" (A Guide To Some Do's & Don'ts Of Email & Other Means Of Social Media & Electronic Communication)

Modern communication forms are great for the legal profession—except when they aren't. Lawyers are inevitably smart, engaged, energetic, and good writers and communicators. All the ingredients to over-do it when it comes to email, texting, and other forms of social media and electronic communication. This panel will offer some real-life examples of where things have gone well—and not so well—with lawyers and e-mailing. You will also hear some helpful suggestions from panelists on their list of "How I learned (the hard way) when to email and when not to email." Real-life practice examples will be in the mix. Audience participation always makes this a good seminar.

Mark V. Franco, Esq., Kenneth D. Pierce, Esq., and Daniel R. Warren, Esq.

3:15-3:30

Break

3:30-4:45

Concurrent Sessions (1.25 CLE credits)

14. Planning For The Mid-Tier Estate In Maine

With higher federal estate tax limits, many clients' must still consider the state estate tax in Maine. The session will focus on the estates with a taxable value between \$2.0 and \$5.43 million, taxable in Maine but not federally. What are options you should discuss with your clients, considering the nature of the assets and the client goals. Illustrations of the tax benefits, along with a discussion of the pros and cons of the various strategies will be presented. A review of typical forms used for each strategy will be discussed.

Richard J. Abbondanza, Esq.

15. Defending An OUI In 2015

More than 6,000 Maine drivers will be arrested for OUI in 2015. Most have never been involved in the criminal justice system, but now find themselves charged with an offense that can have immediate and long-term effects on their personal and professional lives. By leading the audience through a detailed, step-by-step client intake, we will identify and explore the legal and practical issues associated with defending an OUI charge. For the criminal practitioner, this presentation will be “all meat and no filler.” Immediately applicable practice tips, hints, and proven strategies will be shared, as well as statutory and case law analysis. The forensic science aspect of OUI defense will be “lawyer oriented.” Winning arguments against Intoxilyzer 8000 results, and blood test evidence will be explored in detail. Seminar participants who do not practice in the area of criminal law will find the breadth of issues covered to be a one-stop shop for an overview of the criminal charge which has impacted almost every family in Maine.

Scott D. Gardner, Esq.

16. Texting, Sexting, YouTube And Beyond: Practice Tips & Strategies For Preserving & Collecting Evidence In The Digital Age

In the digital age, lawyers face increasing challenges with exploding developments in technology. From family law, to employment claims, and from consumer issues to any and all manner of business dispute, ever-increasing volumes of relevant evidence lurk in the plethora of smart phones, tablets, laptops, and other mobile devices. Lawyers need to catch up and keep pace with the dizzying speed of innovation, communication, and digital recording of human activity. This panel will help the bar keep abreast of developments in the intersection of law and technology as it impacts the Maine practitioner from first client meeting through trial.

Thomas C. Newman, Esq. (Moderator), Caroline Y. Jova, Esq., Hon. John H. Rich III, Eric Robinson, Clifford. H. Ruprecht, Esq., and Geraldine G. Sanchez, Esq.

5:00-5:45

Reception

5:45-10:00

Awards Dinner & Dancing with The Larry Williams Band



Sponsored by Casemaker

Maine's premier show and dance band, the nine-piece Larry Williams Band features some of the finest musicians in Maine. The band, previously fronted by the well known Tony Boffa, features a horn section consisting of trumpet, trombone and saxophone; a rhythm section with piano, bass, guitar, and drums; and female and male lead vocalists. In fact, every musician is capable of singing lead. The band plays extensively throughout the state. Join us Thursday evening for an evening of great music and dancing. Many thanks to Casemaker for sponsoring the Larry Williams Band. Learn more at www.larrywilliamsband.com.

Friday, January 23

7:45-8:45

Continental Breakfast

Maine Bar Foundation Fellows Breakfast

U.S. District Court Local Rules Committee

Section Business Meetings: ADR, Elder Law, Health Law, New Lawyers & Veterans' Law

9:00-10:15

Concurrent Sessions (1.25 CLE credits)

17. Calculations In An Elder Law Practice

Numbers, numbers, numbers! There is lots of math in elder law. How is the MaineCare cost of care calculated? How much income can be allocated from the institutionalized spouse to the community spouse? How do the “deductibles” in residential care and the Home and Community Based Services waiver program work? How much can a facility accept from a family to supplement MaineCare to keep a private room? What is the 4.04% income threshold for income-producing property? What are the income and asset limits the Medicare Savings Program and the Drug for the Elderly and Disabled (DEL) programs? The panel will review the many calculations that are integral to an elder law practice.

Jennifer L. Eastman, Esq., Jane E. Skelton, Esq., and Timothy M. Vogel, Esq.

18. Drafting, Negotiating & Enforcing Non-Compete Agreements

In the modern employment context, non-compete agreements are a regular component of new-hire negotiations, yet many employers and employees are uncertain about the enforceability of these agreements once employment ceases. Maine has a relative dearth of case law on this topic. The few cases that evaluate non-compete agreements state that the language may sweep no wider than is reasonably necessary to protect the employer’s legitimate business interests. However, the practical implications of this adage are less than clear. This session will explore the issues of drafting, negotiating, and ultimately enforcing non-compete agreements from the perspective of both the employer and the employee. The related issues of non-solicitation and non-disclosure will be addressed as well.

Shiloh D. Theberge, Esq. and Laura H. White, Esq.

19. Beyond The Rules: Eliminating Most Of The Rules Of Evidence In Civil Non-Jury Litigation

This panel of distinguished jurists and trial counsel will examine the ramifications of eliminating many of our evidentiary rules in civil non-jury litigation. Building on the experience of other countries and jurisdictions in simplifying and reducing complex evidentiary rules, this group will consider the pros and cons. Will eliminating evidentiary rules lead to more just results? Overwhelm courts with unnecessary information? Provide advantages or disadvantages to plaintiffs or defendants? What are the unanticipated consequences? Join us for a lively and wide-ranging discussion.

Kelly W. McDonald, Esq. (Moderator), Hon. M. Michaela Murphy, Peter L. Murray, Esq., Jodi Nofsinger, Esq., Hon. Valerie Stanfill, and Heather S. Walker, Esq.

10:15-10:45

Sponsor Break

10:45-12:00

Concurrent Sessions (1.25 CLE credits)

20. Like OMG: Word Crimes & Other Misdemeanors. Legal Writing In The Age Of Texting, Chatting, Email & Other Failures To Communicate

Good legal writing is timeless; the pervasiveness of the Internet is not. The digital age’s destruction of the English language is so rampant that even “Weird Al” Yankovic has taken notice. Unfortunately, the acronyms, poor grammar, and other crimes against the written word are slowly seeping into legal writing. Spell check and autocorrect run rampant and are not your friends. This seminar will hearken back to the days when legal writing was fundamental, with a few gentle reminders and practice pointers for persuasive writing.

Angela C. Arey, Esq., Jonathan M. Dunitz, Esq., Hon. Andrew M. Mead, and Karen Frink Wolf, Esq.

21. IP Crash Course For Maine Practitioners

In today's knowledge-based economy, intellectual property continues to be one of the fastest growing legal specialties in the United States. The speakers will give practitioners an overview of the law governing this fascinating and cutting-edge field of law, including the basics of trademark, unfair competition, copyright, patent, and other federal and state laws designed to protect intangible rights. The presentation will include tips and best practices for the practicing lawyer. No prior experience with IP law required.

Jonathan M. Gelchinsky, Esq. and Kyle J. Glover, Esq.

22. Teaching The Practice Of Law: How To Effectively Train New Attorneys

This panel discussion will offer practical tips and advice on training and mentoring junior attorneys. Panelists will discuss specifics including appropriate delegation of work, review of work product, and ways to bring new attorneys into client development. In addition, the conversation will include successful approaches to training and mentoring.

Emily K. Green, Esq. (Moderator), John S. Kaminski, Esq. Thomas C. Newman, Esq., and Abigail C. Varga, Esq.

23. Preserving, Preparing & Trying The Dangerous Product Case

Every lawyer should know how to recognize a potential defective product case because dangerous and defective products injure and kill Maine citizens in their homes, in their cars, in their workplaces and even in their hospitals. This session will be based on real cases, many of which have gone to verdict, and will focus on two areas: the practical, simple and critical things that should be done immediately on discovery of a potential product claim, and the themes, discovery strategies, and techniques required to effectively represent a client in a defective product case. This session will distinguish between point-of-the-spear cases where a client's injury or death is a singular occurrence, and those cases where the client is one of many persons injured or killed by a dangerous product a manufacturer has failed to fix. Special consideration will be given to utilizing "captive experts" such as the state fire marshal's office, medical examiner's office, and OSHA representatives.

Terrence D. Garmey, Esq.

12:00-2:00

VLP Awards Lunch

Hotel Information

Samoset Resort
220 Warrenton St., Rockport

Call the Samoset Resort directly at 1-800-341-1650 to make room reservations. Rates range from \$109 - \$129 per night plus applicable taxes, and rates will be honored 2 days prior and post conference, subject to availability. You must indicate you are with the Maine State Bar Association to receive the preferred rates. After Dec. 22, reservations will be accepted on a space- and rate-available basis.

Hotel Cancellation Policy:

All reservations that are not cancelled three days prior to the arrival date will be charged a fee equal to one night's room rate to the individual. Please refer to the Samoset's reservations department for complete reservation and cancellation policies.

**No Registration
Refunds After
Jan. 15**



2015 Howard H. Dana, Jr. Award Arnold C. Macdonald

The Maine Bar Foundation is very pleased to announce that Arnold C. Macdonald, a resident of South Freeport and a shareholder at Bernstein Shur in Portland, is the recipient of the 2015 Howard H. Dana, Jr. Award. The Award is presented annually to recognize a Maine lawyer who has made significant contributions to increasing access to civil legal aid for low-income Mainers and has played a vital role in advancing the Foundation's goals. Mr. Macdonald is being honored for his work both nationally (Past Member, ABA Commission on Lawyer's Trust Accounts) and here in Maine (Chair, 2014 Campaign for Justice; Past President, Maine Bar Foundation; Past Chair, Volunteer Lawyers Project Advisory Committee; and a frequent provider of *pro bono* civil legal aid services for both the Immigrant Legal Advocacy Project and the Volunteer Lawyers Project.)



2015 New Lawyer Award Zachary Brandmeir

The Maine Bar Foundation is delighted to announce that Zachary Brandmeir, of Brandmeir Law P.A. in Bangor and a resident of Hermon, is the recipient of the 2015 New Lawyer Award. The Award is presented annually to a lawyer who has been in practice for fewer than ten years and who makes outstanding contributions to furthering the cause of equal access to justice. Deeply committed to public service, Mr. Brandmeir has served on the Board of Pine Tree Legal Assistance (2010-2012) and as Treasurer of the Penobscot County Bar Association; provided many hours of *pro bono* civil legal aid to low income Mainers through the Volunteer Lawyers Project; and named by the Maine Supreme Judicial Court as a Katahdin Counsel 2012, 2013, and 2014 in recognition and appreciation of his *pro bono* service.



Presentation To Hon. Jon D. Levy

The Honorable Jon D. Levy served as chair of Maine's Justice Action Group (JAG) from 2008 until 2014. During this period, he made substantial and meaningful contributions to the cause of equal access to justice for low-income Mainers. JAG gratefully appreciates his dedication, guidance, inspiration, and commitment of substantial time and effort of securing greater access to justice. On behalf of all 15 JAG member organizations, the Honorable Andrew M. Mead, JAG's current chair, will recognize and thank Judge Levy.

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2015 Annual Meeting Registration Form

Registrants, instructors, exhibitors and guests attending the MSBA Annual Meeting agree they may be photographed during the event. Photographic materials are the sole property of the MSBA, and the MSBA reserves the right to use attendees' names and likenesses in promotional materials without providing monetary compensation.

Full Meeting Registration

Includes: Thursday breakfast, lunch, reception & dinner, AND Friday breakfast & lunch.

- Full Meeting Registration: Member** \$300
Full Meeting Registration: Non-Member \$350
Full Meeting Registration: Student \$150
Full Meeting Registration: Judge \$ 75 (dinner fee)

Friday Lunch Choices: Lasagna
 Vegetarian Lasagna

List food allergies: _____

One Day Registration (Choose one day)

Thursday Only Includes: breakfast & lunch.

- Thursday Only Registration: Member** \$160
Thursday Only Registration: Non-Member \$200
Thursday Only Registration: Student \$ 75
Thursday Only Registration: Judge \$ 0

Friday Only Includes: breakfast & lunch.

- Friday Only Registration: Member** \$160
Friday Only Registration: Non-Member \$200
Friday Only Registration: Student \$ 75
Friday Only Registration: Judge \$ 0

Friday Lunch Choices: Lasagna
 Vegetarian Lasagna

List food allergies: _____

Thursday Lunch @ \$35 x _____ (#) = \$ _____

Thursday Reception & Dinner @ \$75 x _____ (#) = \$ _____

Friday Lunch

Lasagna @ \$35 x _____ (#) = \$ _____

Vegetarian Lasagna @ \$35 x _____ (#) = \$ _____

List food allergies: _____

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