

# MASSACHUSETTS COURT REPORTERS ASSOCIATION GETS S-978 ANTI CONTRACTING BILL—SIGNED INTO LAW

by Laura Hebb, MCRA Past President

The call came shortly after noon on June 25. It was Robert, “Hey, Laura, she signed it”. I hesitated. “Have you seen it yourself? Are you sure?” Now Robert’s hesitating, “Well, Jay (our lobbyist) just called with the news”. My response, “Oh, yeah, when can we see it?”

That’s probably not how any of you envisioned the board reacting when we got news our anti-contracting bill, S-978, had been signed into law. I’m sure most of you thought we were dancing in the aisles screaming at the top of our lungs, “we won, we won”. Forgive me for my skepticism upon hearing the good news; let’s just say to paraphrase the late Jerry Garcia, “what a long strange trip it’s been”. I think anything that could have gone wrong did, and we took a few other bizarre twists and turns along the way as well.

We knew going in it was going to be an uphill fight. On average it takes at least 12 years for a bill to become law in Massachusetts. To gloat, we did it in less than four. Couple that with the fact that our opposition was the insurance industry and their three or four well-funded, large lobbying firms, we knew we had our work cut out.

## **...we were successful due to everyone who called and wrote their legislators.**

I won’t bore you with the gory details, but the long and short of it is we were successful due to everyone who called and wrote their legislators. You came through each and every time I or Paul called and pleaded with you to do so. MCRA’s board wore out a lot of shoe leather trampling all over Beacon Hill, burning the ear of every legislator we could possibly get in front of. We made incessant phone calls, and your grassroots efforts pushed us over the top.

So what happens now? Robert, Jimmy and I were pondering that fact as we were awaiting the formal signing ceremony. We felt like new parents peering over the crib rail at their newborn and realizing that they don’t come with directions. Our first thought was how to best get the news out. We decided to have a dinner meeting – we’d do some research, dispense some useful information, everyone would get one or two CEUs, have a drink and enjoy dinner. Sounded like a win/win situation for everyone. Hopefully, the 65 persons who attended felt the same way.

The short version is long term, exclusive contracts as of June 25, 2002, are now illegal in Massachusetts. Any contracts in place at the time of the signing of the legislation will play out to their end date. Essentially, anyone who feels they’re aggrieved can bring a claim against whomever they feel violated the law. That means potentially a plaintiff or defendant could sue a lawyer,



Robert Bramanti, MCRA President; Laura Hebb, MCRA Past President; Representative Charles Shannon; and James Lyons, MCRA President-Elect watch as Governor Jane Swift signs the S-978 Bill into law.

individual court reporter, or court reporting firm or any combination thereof. Think of those ads you see for buying three pieces of clothing and miraculously turning them into 15 outfits. This is sort of the same thing. The possibilities of who can sue who are endless.

According to the language of the bill, actions will be brought in superior court and you’re entitled to “all legal and equitable relief within the jurisdiction of the court”. Translated that means a variety of things, from civil damages, i.e. money, to an injunction being issued restraining someone from practicing. We should all be aware that civil/criminal penalties are not specified; that leaves open for interpretation whether criminal charges could or would be brought. As I mentioned at the meeting, my sound advice for everyone, whether individual reporter or agency, would be to investigate malpractice insurance. There may never be a claim brought against anyone; however, if there is, it may be more cost-effective to file a claim against an insurance policy versus paying one of your long-term clients to untangle you from a potential legal mess.

Sometimes as court reporters we understand how the law is applied, but we don’t always understand how legal precedent is set. Precedent is set when juries apply the law and it either stands or is appealed. That means that the specifics of what is and is not a contract are likely to be determined by future lawsuits.

I don’t claim to be omniscient; however, I did mention at the meeting that oral contracts in Massachusetts are binding and

that an interesting test case would be someone who does a certain insurance company's work for a set dollar amount per page; especially if that amount differs from what someone ordinarily charges. How would you justify that arrangements were made on a case-by-case basis versus an oral contract for doing a certain type or scope of work at a certain price.

Well, lo and behold a major insurance company's contract expired September 23, whereupon they immediately sent out a letter to all attorneys informing them of our legislation; that contracts were no longer legal in Massachusetts; those facts notwithstanding, they would still only see fit to pay a certain amount per page on all of their work (well below my understanding of market rates).

MCRA immediately sought legal advice. We've approached this insurance company and are awaiting a face-to-face meeting with them. We feel this violates if not the letter of the law, certainly the spirit. So far scheduling this meeting has not been successful; although, we've received numerous calls saying we're not being ignored, they had bigger issues on their plate that needed to be dealt with first. We did spark their complete and total attention when as we were bumped once again, we mentioned that the Attorney General may be extremely interested in the letter they sent and our next step was to bring it to his attention.

We'll keep you posted as developments occur. What we need people to do is to keep the board informed. Remember that although we're reporters and/or agency owners, we do try to keep the

best interests of the profession in mind. I know it's been my experience that an MCRA hat is entirely different from that of a reporter/owner and we deal with issues that come up in a professional manner. The only way your board can be responsive and stay on top of issues is for you to keep each and everyone informed. It was amazing to me that once I became president, I was no longer privy to court reporting gossip. I'd hear very infrequently what was going on in the "trenches" – and that's from the mundane like who was pregnant or who changed agencies, to the major, like who was forming a new agency or being bought by someone else.

### **If precedent is set, let's try to make sure it's for the benefit of the profession as a whole.**

It's nearly impossible for the board to head in the right direction if we're kept in the dark. One of the most dangerous that could happen at this point would be for someone to file litigation or be sued under Chapter 221 Section 91D and not keep the board informed. If precedent is set, let's try to make sure it's for the benefit of the profession as a whole. That's why we filed this legislation in the first place. Our intent was to maintain the impartiality and integrity of the profession and to level the playing field so that big or small, everyone had the same chances and opportunities.

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