

# pro bono press

SPRING 2009

## Letter from the Executive Director

It is with mixed emotions that I announce my plans to leave VLP at the end of 2009. The dominant emotion, however, is excitement. I look forward to new challenges and, perhaps more time for some personal interests. I am excited also that VLP will benefit from new, energetic leadership to continue its critical mission to provide access to the judicial system.

Over the next several months, the VLP community--staff, board and friends--will undertake the transition to new executive leadership. VLP's Transition Committee is at work planning the hiring process. The search for an Executive Director will be announced later in the year. In the meantime, I look forward to the next several months of working with all of you dedicated volunteers and supporters. 



Mary M. Connolly, Executive Director

## New Massachusetts Probate Code Enacted on January 15, 2009

On January 15, 2009, Governor Deval Patrick signed into law Chapter 521 of the Acts of 2008, after nearly 20 years of discussion and debate. It is the Massachusetts version of the Uniform Probate Code and becomes effective on July 1, 2011. The Guardianship provisions of the Code become effective on July 1, 2009. To date, 18 states have adopted the Uniform Probate Code, sometimes with significant modifications. The new law will be codified as Massachusetts General Laws, chapter 190B. As of July 1, 2009, statutes governing guardians, trustees, conservators, powers

of attorney and bonds are repealed. The Massachusetts Probate Code modernizes the practice of Guardianships and Conservatorships. Guardian-

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ship terminology will change. A person who is subject to a guardianship will be referred to as an "incapacitated person." The term "ward" shall only

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### Upcoming Training Opportunities

Landlord/Tenant Law  
**March 23, May 18, & June 29, 2009**  
4:00 to 5:30 pm

Family Law 102  
**March 26, May 24, & July 7, 2009**  
4:30 to 6:00 pm

Guardianship of Minors  
**June 16, 2009**  
4:00 to 6:00 pm

Family Law 101  
**April 16, June 18, & August 13, 2009**  
4:30 to 6:00 pm

Employment Discrimination  
**April 29, 2009**  
4:00 to 6:00 pm

Guardianship of Adults  
**June 30, 2009**  
4:00 to 6:00 pm

All trainings are held at the VLP office and are free to attorneys who agree to take pro bono cases. To register, please contact Isabel Burney at (617) 423-0648, ext. 150 or [iburney@vlpnet.org](mailto:iburney@vlpnet.org), or visit our website, [www.vlpnet.org](http://www.vlpnet.org).

## Help Needed for Tenants Who Fall Victim to the Foreclosure Crisis

As home foreclosure problems around the country continue to make headlines, foreclosures on rental properties are making lenders into landlords and landing tenants in court. Effective November 29, 2007 private market tenants in a unit that is foreclosed on become tenants at will, and state or federally

subsidized tenancies are not affected by foreclosure. (see G. L. c. 186 §13A) A large portion of the properties in Boston in foreclosure go back to the lender or their servicing agent, resulting in new landlords suddenly owning many properties with existing tenants. These new landlords are often taking over properties

that have fallen into disrepair as the prior owners ebbed towards foreclosure. Utilities often are not transferred into the new owner's name and tenants lose heat, water, and electricity. Rather than bringing the properties into compliance with the State Sanitary Code, the lenders turned landlords are often refusing to collect rent and then bringing the tenants to court to evict them through summary process.

VLP's panel of volunteer attorneys is helping tenants


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## New Massachusetts Probate Code Enacted on January 15, 2009

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apply to minors. Greater protection is afforded to persons who are the subjects of petitions for guardianship. There is a right to counsel for wards and incapacitated persons recognized in the new Probate Code. If an individual subject to guardianship or conservatorship, or someone on his or her behalf, requests counsel, or if the Court determines that he or she may be inadequately protected, the Court shall appoint counsel.

Upcoming trainings are planned by VLP, MCLE and the various bar associations on the New Massachusetts Probate Code and its implications for practice. For a more detailed written description of anticipated changes or to discuss this further, please contact Veronica Serrato at (617) 423-0648, ext. 141 or [VSerrato@vlpnet.org](mailto:VSerrato@vlpnet.org) 

## Thanks to the BBA !!

The number of clients seeking VLP services for unemployment claims has tripled in the past few weeks. In response to this demand the Pro Bono Committee of the Litigation Section of the Boston Bar Association organized a training for lawyers willing to help. The training occurred on a very stormy March 2 and over 40 lawyers attended and signed up. Our deepest thanks to David Robinson of the Litigation Section, Paul Dullea of the BBA and Monica Halas of GBLS who conducted the training. And of course, many thanks to those who attended and offered to help us out. Yet another example proving that we couldn't do this without all of you!!

## How You Make a Difference...

### Martha Rush O'Mara Consolidates Claims and Ensures Children's Safety

Attorney Martha Rush O'Mara succeeded after trial, over the strong and vocal objections of the opposing party, in obtaining judicial consent for a VLP client to move out of Massachusetts with two children in her care: her son and her son's half-sister of whom the client has permanent guardianship.

The children's father is incarcerated due to convictions based upon the domestic violence he inflicted upon the client and the two children. The charges included stalking and violation of abuse prevention orders.

The two removal cases were originally pending in different counties. Attorney O'Mara took the case on a limited representation basis, liked the client and considered the case meritorious and ultimately took the case to trial on the basis of continued limited representation. She first achieved consolidation of the cases so that they could be simultaneously litigated in the same Court. She relied on opinions expressed by the children's therapist as well as the children's needs for consistency and safety in light of the past trauma they had endured. Attorney O'Mara prevailed in the difficult task of obtaining permission for the client to remove a biological child from the Commonwealth, depriving the incarcerated opposing party from having any contact with his son.

Beyond that, she accomplished the more difficult task of obtaining judicial consent to remove a second child of the opposing party of whom the client had permanent guardianship, and no biological relationship.

After winning at trial, Attorney O'Mara assisted the client with name change petitions for herself and the children to allow them to move out of Massachusetts and remain safe from the defendant.



### Chelsea Loughran of Wolf, Greenfield & Sacks Saves Pregnant Nurse's Unemployment Benefits

A pregnant registered nurse who was fired by a suburban hospital for allegedly "leaving duty without permission" was denied benefits when she tried to collect unemployment insurance. She appealed and won, thanks to Chelsea Loughran of Wolf, Greenfield and Sacks. Attorney Loughran normally works on patent and trademark cases but handled the unemployment matter pro bono.

The 26-year-old nurse's supervisor fired her after she took a short break from work to move her vehicle. When the nurse's unemployment claim was rejected, she approached VLP. VLP referred her to Attorney Loughran who successfully handled the administrative appeal.

Under Massachusetts law, terminated employees can generally collect unemployment insurance with relatively limited exceptions. In this case, Loughran was able to prove that there was nothing unusual or improper about the conduct that led to the nurse's dismissal. "It was egregious that she was fired on the spot for moving her car," Loughran says.

A DUA Review Examiner ruled, "The employer's RNs understood that they could leave the floor for a short time for such purposes as long as they informed someone on the floor of what they were doing. Therefore, there is no substantial and credible evidence that the discharge of the claimant was due to deliberate misconduct in willful disregard of the employer's interest."

**"It is a great experience to take a smaller case, develop the facts, argue an appeal, cross-examine the employer, and handle everything from beginning to end."**

Loughran believes her client may have been fired because she declined to work night shifts when she reached the seventh month of pregnancy. In any case, the firing simply did not meet the legal standards for denial of unemployment benefits. "This case demonstrates the importance of pro bono work to provide people like my client with legal representation—it can make a big difference," emphasized Loughran.

## VLP Honored by Grants for Pilot Projects

In late 2008, VLP received two grants to assist with pilot projects. VLP has been awarded a three-year grant by the Pro Bono Institute in Washington, D.C. to launch a Second Acts® pilot project to establish an innovative model to engage transitioning and retired attorneys in significant, volunteer public interest law opportunities. VLP is one of four organizations in the country selected to pilot Second Acts® projects. Other projects are in New York, San Francisco and Milwaukee.

The enormous popularity of Senior Partners for Justice attests to the desire of attorneys who have had long, successful careers in private practice or the judiciary to use their skill and experience to help those in need through pro bono service.



**All are invited to our Annual Reception on April 15th at 4:30 at the John Adams Courthouse, 2nd floor.**

Please RSVP by calling 617-423-0648 (press '0' for operator) or email Isabel Burney at [IBurney@vlpnet.org](mailto:IBurney@vlpnet.org)

Working in cooperation with Senior Partners for Justice, the Second Acts® pilot project at VLP will collaborate with Boston's largest law firms to provide their most senior and retired attorneys opportunities to engage in significant and meaningful public interest practice. On a structural level, VLP's Second Acts® pilot project will work with large law firms to create a pathway and institutionalize firm support for transitioning and retired attorneys interested in a "second act" in public service.

The Second Acts® pilot project at VLP will offer an array of meaningful pro bono opportunities and broker placements tailored to each attorney's substantive interests and time commitments. Cases and projects will range from individual repre-

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sentation in cases through VLP, to placement as a "staff attorney" in a legal aid office, to providing legal counsel to nonprofit agencies, to mentoring and teaching, to signature projects that address far-reaching systemic issues. VLP will provide training and support to attorneys interested in trying new areas of law. Another key feature of the Second Acts® pilot project at VLP will be to foster collegiality and intellectual stimulation for veteran

lawyers with periodic get-togethers and educational seminars.

For additional information, please contact Senior Partners Project Manager Barbara Siegel at [bsiegel@vlpnet.org](mailto:bsiegel@vlpnet.org) or (617) 423-0648, ext. 123.

VLP has also received a one-time grant from the American College of Bankruptcy to support VLP's efforts to recruit and support pro bono attorneys to handle Chapter 13 bankruptcies for clients facing imminent foreclosure. VLP plans to recruit three private attorneys who will agree to take one or two Chapter 13 Bankruptcy cases on a pro bono basis in order to save the debtor's home from foreclosure. Those attorneys will have the assistance of law students who have taken a consumer bankruptcy course and who are interested in volunteering their time on behalf of low income debtors.

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## Help Needed for Tenants Who Fall Victim to the Foreclosure Crisis


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facing eviction both in Boston Housing Court and other courts within our service area. In the vast majority of these cases, the tenants have done nothing to initiate an eviction action, other than having had the misfortune to rent from an owner who later went into foreclosure. The attorneys work through negotiation, mediation, and sometimes litigation to achieve the best outcome for each situation. In some cases the conditions are so bad that the tenants want to move. In other cases the tenants have roots in the neighborhood or children in the local school, and they have the right to stay and have the landlord maintain the property.

In a recent case the client and her three children were living in an apartment in a multi-unit building. The client came home to find a Notice to Quit. She called the landlord and he told her that the building had been foreclosed upon months ago. The client had been paying her rent the whole time to the prior landlord and had no idea that the building had changed owners. There were broken windows in the common areas that the tenants

had covered with cardboard to keep the cold out, flooding in the basement, and roach and mice infestation throughout the building. At Housing Court, a VLP panel attorney was able to negotiate with the new landlord to get the property repaired, money for damages, and the summary process case withdrawn.

**VLP's panel of volunteer attorneys is helping tenants facing eviction both in Boston Housing Court and other courts within our service area.**

Attorneys who are interested in learning how to represent tenants in foreclosed properties are invited to attend a **free training on Tuesday, April 14 from noon to 2 p.m. at VLP**. For more information or to sign up, please contact Jessica Rubin Wills at (617) 423-0648, ext. 129 or [jrubin-wills@vlpnet.org](mailto:jrubin-wills@vlpnet.org). 

## How You Make a Difference...

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The experience was also valuable for Loughran. "It is a great experience to take a smaller case, develop the facts, argue an appeal, cross-examine the employer, and handle everything from beginning to end," she says. "How else do you learn?"

Loughran reports that her client recently had a healthy baby. 

## Client Thanks Sarah Carter Clunan

At VLP, we are well aware of how hard our volunteer attorneys work on behalf of our clients, but we are always happy to receive client feedback that confirms this. We received one such call in early 2009. Sarah Carter Clunan, a member of VLP and Senior Partners for Justice, previously helped a mother obtain a divorce, a child support order, and the ability to stay in the marital home until her children graduated from high school. This year, the client needed help with a new contempt case. She contacted Attorney Clunan, who agreed to assist her through VLP and Senior Partners.

After VLP informed the client that her new referral had been approved, the client called us back simply to say thank you. She told us that, in addition to providing her with outstanding legal advocacy, Attorney Clunan offered her emotional support and caring reassurance during a very difficult time. "I don't know what I would have done without her," the client told us.

As we prepare for our annual reception in April to thank our volunteers, we know that the impact of a pro bono attorney can often be expressed most directly and powerfully in the words of the clients themselves. 

## VLP Honored by Grants for Pilot Projects

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Because of the more complex nature of a Chapter 13 case, VLP is seeking attorneys with Chapter 13 experience and an interest in learning more about saving a home from foreclosure through bankruptcy. If you are interested in being considered for this project, please contact VLP's Referral Coordinator, Jessica Rubin-Wills, at [jrubin-wills@vlpnet.org](mailto:jrubin-wills@vlpnet.org) or (617) 423-0648, ext. 129.

# *pro bono press*

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