

Attorneys predict top Massachusetts legal news of 2016

By: Kris Olson [©] January 7, 2016

"Civil litigators will wrangle mightily over the new discovery rules requiring discovery to be proportionate to the case."

— **Michelle R. Peirce, Donoghue, Barrett & Singal**, Boston

"This may not be the most significant story as such but will impact a large percentage of the people who use the Probate & Family Court: First, the [Uniform Child Custody Jurisdiction and Enforcement Act] will pass, and Massachusetts will no longer stand alone in resisting giving the state with original jurisdiction over custody matters continuing exclusive jurisdiction as long as one of the parties remains there. Under current Massachusetts law, in which Massachusetts loses jurisdiction after the children have been gone for six months and established a new home state, it is very hard to negotiate removal cases without a contested trial. Second, there will be a comprehensive revision of custody laws. Just as the alimony reform of a few years back updated alimony laws to meet changing social patterns, the custody reform act will update the laws, making it more child-oriented and recognizing changing social patterns in which many fathers play a more significant role in child rearing."

— **Edward M. Ginsburg**, retired judge, Probate & Family Court

"I predict that Congress will pass a criminal justice reform package that will include a provision requiring federal prosecutors to affirmatively prove that defendants in white-collar crime cases 'knew or had reason to believe conduct was unlawful,' a significant departure from the current standard, especially given that 'reason to believe' is far more subjective than 'reason to know.'"

I also predict that the Pats will win the Super Bowl."

— **Andrea J. Cabral**, former Suffolk County sheriff and secretary of public safety

"Legal issues surrounding addiction and the war on drugs. A state whose political leaders recognize that addiction is a disease cannot simultaneously press onward with a drug war that has yielded mandatory minimum sentencing, a deadly shortage of treatment beds, and two enormous lab scandals. Something has to give."

— **Matthew Segal**, legal director, ACLU of Massachusetts

"The historic efforts to begin to reverse the excesses of the War on Crime and War on Drugs of the 1980s as a matter of both federal and state law with a greater focus on the dismantling of the minimum mandatory sentence structure, the substitution of treatment for incarceration for minor drug offenses, and continued efforts in both the legislatures and courts to reduce the over-criminalization of victimless conduct and the over-imprisonment of non-violent first offenders. Also, continued efforts to apply the Fourth Amendment to the new technologies of the Internet age."

— **Martin G. Weinberg**, Boston

"On the heels of the landmark Act Clearing Title to Foreclosed Properties, the [Supreme Judicial Court] will further shape the title landscape when it addresses certain bankruptcy trustee challenges to mortgages, determining whether an affidavit filed pursuant to G.L.c. 183, §5B can cure the alleged mortgage defects [*Casey*, SJC-11943, slated for argument in February], and whether an allegedly defective document already accepted for registration is affected [*In Re: Mbazira* and *In Re: DeMore*, which are expected to follow]."

— **Jason A. Manekas** and **Meredith A. Swisher, Bernkopf Goodman**, Boston