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NEFAC MEETING JUNE 27, 2024

MASSACHUSETTS

- Access. Alleged buyers in a high-end sex brothel case and access before the SJC to applications for criminal complaints and to the show cause hearings being pursued by WBUR and the Globe. The district court granted access to the hearings. Further requests for access to the applications were denied. WBUR took the issue to the SJC. Several amicus brief requests have been granted. MNPA and NEFAC denied. The underlying district court case is stayed. Rather than filing an amicus MNPA and NEFAC are still on the docket sheet, and we receive notices from the SJC. 17 John Does opposed (28 individuals arrested) including elected officials, high tech executives, doctors, military officers, government contractors with security clearances, professors, attorneys, scientists, accountants, among others. SJC remanded this case back to the Clerk Magistrate to articulate a basis of finding that public interest outweighed privacy rights in one instance but not the other. SJC-2024-0018. On February 2, 2024, the SJC single Justice affirmed the clerk's decision to open the hearing and deny access to the applications and lifted the stay of proceedings order; however, on motions by John Does for a hearing before the full SJC court, the matter was again stayed

pending review by the SJC. LATEST: Motion to extend date for filing of Appellee's filing for Clerk Magistrate.

- Anti-SLAPP. A recent case has brought the state's anti-SLAPP statute back to a simpler litigation analysis. In the *Bristol Asphalt Co.* the SJC abandoned the "second path" tests (the *Blanchard tests*). Now anti-SLAPP cases will be decided using to the former lower bar test more in line with the Legislature's intent to provide an expeditious way to resolve litigation targeting petitioning activity. Good for the media. Very difficult to succeed as a Plaintiff (such as a defamation claim) when petitioning activity is involved.
- Access. Youth offender files. SJC decision that the petitioner who is an adult is able to have his youthful offender records sealed after he has satisfied all the listed requirements applying the record sealing under G.L. 276, §100A rather than the adult criminal record sealing statute under §100B. 14-page decision J. Lowy.
- Access. Lawyers Weekly reports that a Pittsfield defense attorney is accusing the Berkshire County District Attorney's Office of a "systemic" failure to disclose exculpatory evidence in the form of internal affairs records that bear on the credibility of police officers who appear as witnesses at trial. A "Brady list" issue of officers with problematic disciplinary records. The opposition claims that opening up the universe of police misconduct complaints to the world would unfairly smear people. Note that in the *Graham* case the SJC held that the Hampden County District Attorney's Office, through certain office discovery policies breached its duty to disclose exculpatory evidence.
- Advertising. "Deep fake" political ads. Sen. Barry Feingold filed a proposal that would prohibit anyone running for political office from distributing deceptive or fraudulent "synthetic" ads within 90 days of an election. \$10,000 fine. But exempts news organizations from liability if they make a "good faith effort" to explain that it isn't real. AI-generated deep fakes an issue. Liability waivers in rate cards and on insertion orders may help.
- Restraining Order. Massachusetts newspaper publisher Tom Duggan of The Valley Patriot (Methuen) has been charged with a NH harassment

order. Mr. Duggan alleges that this is based solely upon his aggressive pursuit of potential wrongdoing by a City of Lawrence employee who is upset about the uncovering of suspect dealings. Basically, a news report. Then, Tom was arrested by Methuen Police for violating this Order by attending a social function at a Church next to the alleged victim's business. Both cases are pending.

- Defamation. Discovery. Where a complaint has been filed by plaintiffs who allege their images have been improperly used to promote nightclubs offering adult entertainment, the case should be stayed pending a decision from the Mass. SJC on a certified question regarding how the discovery rule should apply to defamation claims based on social media postings. Twelve causes of action. One issue is that more than three years have passed since some postings. *Ratchford v. Orange Lantern*, Civil Action No. 19-30092-MGM, March 13, 2024.
- Virtual Access. Open With virtual access to public meetings set to end in one year, MNPA, NEFAC, Common Cause, NENPA, and others have renewed their call for permanent reforms to guarantee hybrid access to open meetings. Bills H.3040/S.2024 proposes access to open meetings for everyone by requiring options to attend vs. the Governor's Municipal Empowerment Act which proposes to give public bodies complete discretion.