



Ben T. Clements: A Massachusetts attorney's experience in political policy and private law

BY KELSEY SADOFF

Sitting on a desk in Ben T. Clements' new law office, next to a framed drawing from his little girl of the two of them playing hockey, is an inscribed photo from Gov. Deval Patrick. "To my favorite lawyer," is scrawled across the bottom of the photo, which features three smiling attorneys: Clements, Patrick and Michael J. Pineault, who was the governor's deputy chief legal counsel.

"I have been lucky in my career," said Clements, who in November left his position as chief legal counsel to Patrick and launched his own firm, Clements & Pineault LLP, with Pineault.

Clements, who Patrick calls "the father of ethics reform" in Massachusetts, is jumping back into private legal practice after serving three years as the executive branch's top lawyer.

"I have held a series of challenging and rewarding positions in the public and private sector and I have really enjoyed moving from one to the other and the ability to serve in both worlds," he said.

A graduate of Dartmouth College, *cum laude*, and Cornell Law School, *summa cum laude*, Clements began his legal career with summer associate jobs in New York and Washington, D.C., before serving as a law clerk for the chief judge of the U.S. Court

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PHOTO BY MERRILL SHEA

Ben T. Clements spent three years working at the Massachusetts Statehouse as Gov. Deval Patrick's chief legal counsel, including shepherding through ethics reform legislation. He recently returned to private practice.

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VALERIE A. YARASHUS

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My challenge to you, as we begin 2010, is to take us up on this. Trying something new takes energy, and so this is the perfect

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MBA launches task force to address crisis in court funding

BY BILL ARCHAMBEAULT

The Massachusetts Bar Association has created a task force to put a human face on the impact that drastic budget cuts are having on the courts.

The Crisis in Court Funding Task Force will compile stories of hardship among public users of the court system and will present a report to the House of Delegates meeting in March. If endorsed, the report will support calls for the Legislature to adequately fund the state court system, which was cut from an initial fiscal 2009 budget

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Criminal legislation, REBA appeal case, medical marijuana top November HOD meeting agenda

BY TRICIA M. OLIVER

The 2009–10 Massachusetts Bar Association House of Delegates met for the second meeting of the association year on Thursday, Nov. 19 at the Mass Mutual Center in Springfield. The full agenda indicated a busy start to the association year, as officers and section leadership brought forth a collection of timely and relevant proposals for the House to consider.

COMMITTEE, TASK FORCE PROGRESS REPORT

After calling the meeting to order, MBA President Valerie A. Yarashus provided her report. She informed the group that she received word from Gov. Deval Patrick's office that the closing of the Bridgewater Treatment Center was put off indefinitely. The MBA first corresponded with the governor's office on this issue in October with a letter in support of keeping the facility open.

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MBA ANNUAL CONFERENCE

MBA brings the conference's many components back to one spring event.

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VOLUNTEER SPOTLIGHT

Dorothy Varon devotes countless hours to pro bono housing program.

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MBA HOLIDAY PARTY

MBA members and friends meet at the MBA to network, socialize.

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of Appeals for the First Circuit.

In 1990, Clements entered private practice at the Boston firm Hill & Barlow, which included a brief stint as special assistant district attorney for Middlesex County. In 1994, Clements was appointed an assistant U.S. attorney for the District of Massachusetts.

In 2001, Clements re-entered private practice, becoming a partner at Boston's Sullivan, Weinstein & McQuay PC before founding Clements & Clements LLP with his brother Jeff in 2003.

During the 2004 Democratic National Convention in Boston, Clements lunched with Patrick, a former Hill & Barlow partner and colleague who was Coca-Cola's vice president and general counsel at the time. The two had become friends while working closely on a number of cases at Hill & Barlow, and it was at that lunch that Clements learned Patrick was thinking about running for governor.

"At the time, I was distraught about where the politics of this country were headed, and I was very excited about the new direction and leadership that Deval would bring to our politics and our government," said Clements.

In January 2005, when Patrick began his run for governor, Clements became a legal advisor for the campaign while maintaining his practice at Clements & Clements LLP. When Patrick won the election, Clements was offered — and accepted — the chief legal counsel position in the Patrick Administration.

"I believed strongly in Patrick as governor, and still do. When the person you helped campaign for governor gets the position and asks you to take a senior position in the administration, there is really only one answer. I couldn't pass it up," said Clements.

FAMILY TIES

An American growing up in Canada, Clements moved from Toronto to Connecticut when he was 10 years old. The youngest of four, Clements and his older brother Jeff are the first two lawyers in their family.

"We did not necessarily think Ben would become a lawyer," said Jeff. "But we knew he would use his considerable intellect, sense of right and wrong, and competitive instinct in whatever work he

chose."

At Dartmouth, Clements was drawn to studying moral and political philosophy as well as legal and political theory — sparking his interest in law school and prompting him to attend the Cornell Law School with Jeff.

"We had a great time in law school, from playing hockey together to being moot court partners," said Jeff, who was a year ahead of his brother at Cornell. "We were both among those who actually enjoyed law school immensely, and believe law and litigation, even with its shortcomings, to be a high calling and a real means of justice."

"I didn't go to school with a specific plan in mind, but I knew I was interested in pursuing a career in law," the younger Clements said. "I was also interested in government and how it works. I see the two as closely interrelated, but I had no set idea on the path I would take."

Although the Clements brothers would pursue different legal ventures post-college, the pair reunited professionally in 2003 to open Clements & Clements LLP — a boutique litigation firm.

"Whether we were at different firms or at different law enforcement agencies, we would share the joys, frustrations and occasional absurdities of active litigation work," said Jeff.

When Clements was offered the chief legal counsel position and

left the firm in early 2007, he thought he would return to the firm in two or three years. However, soon after he left for public office, Attorney General Martha Coakley asked his brother Jeff to run the Public Protection Bureau, and Clements & Clements LLP dissolved.

"There is enough of an overlap in what we do, and we have such a strong bond, that I expect we will work together on things in the future," Clements said.

GOING PUBLIC

In 1994, in his first public position, Clements was an assistant U.S. attorney responsible for investigating and prosecuting a wide range of federal crimes, including public corruption and civil rights violations. It was through these investigations that Clements first gained legal experience on political issues such as campaign finance law — experience and expertise he would later lend to Patrick's campaign.

"As a relatively young lawyer, I was lucky to work with some superb prosecu-

tors, who taught me a great deal about what it takes to be an effective federal prosecutor," he said. "It requires combining the skills of a dogged investigator, a careful and diligent lawyer, with a willingness and ability to make thoughtful and difficult judgments."

The Hon. Tim Feeley, associate justice of the Superior Court, worked with Clements for seven years at the U.S. Attorney's office. The two worked as trial attorneys in the Major Crimes Unit before Feeley was appointed chief of that unit in 1995 and Clements transferred to the Public Corruption and Special Prosecutions Unit.

"Ben took full advantage of his time at the U.S. Attorneys' Office to gain trial experience," said Feeley, who said Clements was an attorney who did not try to avoid tough cases. "Ben invited and solicited work that would make him a better lawyer."

CHIEF LEGAL COUNSEL HIGHLIGHTS

As the Patrick Administration's first chief legal counsel — a job likened to "trying to drink water from a fire hose," Clements advised the governor on legal and policy issues, judicial selection, legislation and all legal issues concerning the governor.

"Ben is both a respected colleague and dear friend," said Patrick. "I trust him. We know each other's blind spots — not that he has any — and have learned over many years how to lean on each other."

Clements, whose three-year career as chief legal counsel is highlighted by his work in establishing the governor's judicial selection process and helping to institute Chapter 28 of the Acts of 2009: An Act to Improve the Laws relating to campaign finance, ethics and lobbying, also became a key advocate for the courts.

"If the issues were easy, they wouldn't get to the governor's legal counsel," said the Hon. Robert J. Cordy, associate justice of the Supreme Judicial Court and Massachusetts Gov. William Weld's first chief legal counsel. Cordy characterized the chief legal counsel position as one where an individual must constantly interact with difficult, different, time-sensitive issues, noting "there is no handbook on how to be the governor's chief legal counsel."

Clements, who became a liaison for the courts during one of the most fiscally challenging times in recent history, feels



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PHOTO BY JEFF THIEBAULT

"the courts are the bulwark of our constitutional democracy," a view he says is shared by Patrick. "I don't think you could find a governor anywhere with more respect for the central role played by the courts in a democratic society," said Clements.

However, with the state budget posing a significant challenge to every aspect of government, he also believes the courts will need "to continue to be part of the solution of this unprecedented budget gap."

"The great challenge for the legal profession and the courts in maintaining a strong and independent judiciary will be to preserve and increase the public's understanding and respect for the essential role of the courts," he said.

JUDICIAL NOMINATIONS

When Clements began his chief legal counsel position after the election in November 2006, he also became responsible for establishing and overseeing the work of Patrick's Judicial Nominating Commission, a 21-person committee charged with reviewing applications and making recommendations to the governor's office for all judicial and clerk-magistrate appointments. Under Patrick's executive order establishing the current JNC, the committee recommends between three and six applicants for each vacancy.

"The most important legacy that any chief legal counsel can leave is the judg-

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es,” said Cordy.

Clements, who oversaw 56 appointments to the judiciary (52 judges and four clerk-magistrates), reviewed the applications passed on from the JNC and interviewed each applicant before making a recommendation to Patrick for particular vacancies.

“Ben dedicated a tremendous amount of time to this process, which gives my work and the work of the Judicial Nominating Commission a great deal of meaning,” said Elizabeth Dubin Nadzo, who was one of Clements’ deputy legal counsels and the executive director of the JNC.

As part of his work with the judicial selection process, Clements also coordinated the review of likely nominees by the Joint Bar Committee on Judicial Appointments (JBC), a committee chaired by the Massachusetts and Boston Bar Associations, which conducts an independent screen of the nominees.

“Ben was a very active and hands-on chief counsel. He had a close working relationship with the JBC and respected the voice that the private bar has in the judicial selection process,” said Martin W. Healy, MBA general counsel and executive secretary for the JBC. “In addition to his quick, analytical mind, he brought a great sense of compassion to the job. He truly cared about the individual judicial aspirants and was a good shepherd in what can be an enigmatic and complex environment. In the past six gubernatorial administrations that I have worked with, Ben has clearly distinguished himself among the top echelon of governors’ past legal counsels.”

Clements came away from the judicial nomination process “inspired and reinvigorated by the legal profession,” with the “idea that you can find judicial excellence in a whole range of backgrounds.”

Noting that Patrick sought out and appointed “excellent judges from an extremely diverse range of backgrounds, both personal and professional,” Clements believes Patrick’s legacy in the judiciary will be his consistent appointment of highly qualified jurists who understand “judging is more than getting the rules right; it is appreciating the real-world im-

“Judging is more than getting the rules right; it is appreciating the real-world impact on real people of every decision that a court makes and appreciate the importance of how those people are treated in getting to those decisions.”

— BEN T. CLEMENTS



PHOTO COURTESY OF COMMON CAUSE MASSACHUSETTS AND PHOTOGRAPHER ANDREW KINGSLEY

Clements, second from left, participates in the signing of an Act to Improve the Ethics, Lobbying, and Campaign Finance Laws. Clements, who chaired Gov. Patrick’s Task Force on Public Integrity, helped create this comprehensive legislation that reformed the ethics and lobbying laws in Massachusetts.

pact on real people of every decision that a court makes and appreciating the importance of how those people are treated in getting to those decisions.”

“FATHER OF ETHICS REFORM”

Along with the judicial selection process, Clements’ tenure as chief legal counsel was marked by the passage of Chapter 28, the comprehensive legislation on reforming the ethics and lobbying laws in Massachusetts.

In late October 2008, Patrick asked Clements to put together a Task Force on Public Integrity after a series of highly publicized allegations and charges of official misconduct left the impression “amongst the public and people in government, that there was a crisis of confidence in state government.”

Patrick signed an executive order to form the Task Force on Public Integrity on Nov. 7, 2008, and charged the task force with examining the existing regulatory frameworks that govern ethics, lobbying and public employee conduct. Clements ended up chairing the 12-member bi-partisan task force, which included members with experience both in and out of government and with public integrity and bribery issues.

“Ben is the perfect example of what a governor’s legal counsel should be,” said Doug Rubin, Patrick’s former chief of

staff, who worked with Clements when the issues with ethics and lobbying laws surfaced.

“Ben, in a short period of time (60 days), put together the furthest-reaching ethics reform legislation [that this state had seen] in 20 to 30 years,” said Rubin, who believes Clements’ greatest strength as an attorney is his integrity. “He is somebody that — no matter what comes up — he has a very strong moral code. When you get an answer from Ben, you can be 100 percent confident that it is the way to move forward.”

The legislation the task force recommended outlined several key categories for reform, including: provisions to strengthen the gifts and gratuities laws; clarifying and strengthening lobbying laws; giving state agencies responsible for investigating and prosecuting ethics and lobbying violations adequate tools; updating civil and criminal penalties for ethics and lobbying violations and for bribery; and establishing mandatory education for government employees and lobbyists so individuals know the laws and can comply.

“Ben is the father of ethics reform in Massachusetts,” said Patrick. “He did the homework, consulted broadly, got unanimous support from the task force, drafted the legislation and responded to questions and concerns from lawmakers and constituents throughout. The bill brought sweeping reform ... I placed my trust in him and he did not disappoint. In fact, he made me proud.”

As he re-enters private practice, Clements reflected on some of the accomplishments of the past three years. “In terms of the work that we did with judicial appoint-

ments, the ethics and lobbying reforms, as well as important reforms in state pension law and transportation, and the quality of the legal advice that we were able to give the governor on legislation, policy and many other issues, day in and day out, I feel very good about what we accomplished during my tenure as chief legal counsel,” said Clements. “After the governor signed the ethics and lobbying legislation in the beginning of the summer, I felt that we had a very solid record of accomplishment and that it would be a good time to return to private practice and let someone else take on the chief legal counsel role through the election and into the second term.”

CLEMENTS & PINEAULT LLP

With the establishment of Clements & Pineault LLP, Clements will once again be involved in the “competitive, fast-paced” world of litigation.

New law firm partners Clements and Pineault have a long history of working together. The partners attended Dartmouth College together, but were first introduced while clerking in the U.S. Court of Appeals.

“For much of the last 20 years, we have worked together, and it has been a real blessing to have Mike as a colleague and as a friend,” said Clements. “[Pineault] is one of the best lawyers I have ever met.”

Pineault, who wanted to open a law firm with someone he respected professionally and personally, is looking forward to doing high-quality work in a collegial environment with Clements. “I want a colleague whose judgment I value and

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PHOTO BY JEFF THIEBAUTH

Michael J. Pineault (left) and Clements (right) have worked together for more than 20 years, most recently in the Patrick administration as deputy chief legal counsel and chief legal counsel, respectively. They recently launched Clements & Pineault LLP in Boston.

11th Annual Walk to the Hill to rally support for civil legal aid Jan. 27

The 11th Annual Walk to the Hill for Civil Legal Aid will kick off at 11 a.m. on Wednesday, Jan. 27, in the Great Hall of the Statehouse, where attorneys and legal advocates will highlight the importance of these programs. The need to maintain funding is just as great for fiscal year 2011 as it was last year.

“Our message to legislators will again be twofold: maintain funding for the Massachusetts Legal Assistance Corp. (MLAC) line item at \$9.5 million and include this issue as a personal legislative priority,” said Pattye Comfort, director of the Equal Justice Coalition.

Massachusetts Bar Association President Valerie A. Yarashus is slated to speak about the urgent need for more funding. She will be joined by Boston Bar Association President John J. Regan. A legal aid client will also share how the program has helped their family resolve a legal issue.

The past year’s economic troubles have taken a toll on

civil legal aid in Massachusetts, according to Comfort. Income from the Interest on Lawyers’ Trust Accounts (IOLTA) program has plummeted 63 percent since fiscal 2008 and is not expected to increase in fiscal 2010. Compounding this loss is the decrease in the civil legal aid line item — from \$11 million in fiscal 2009 to \$9.5 million in fiscal 2010.

Walk to the Hill is one of the largest lobbying events at the State House, and last year’s drew a crowd of more than 750, the highest turnout in the event’s history.

Registration: 11–11:30 a.m.

Speaking program: 11:30 a.m.–noon

Legislative visits: noon–1 p.m.

Lunch will be served.

For more information, visit www.equaljusticecoalition.org. To view a funding fact sheet, visit www.equaljusticecoalition.org/PDF/FY11-Fact-Sheet.pdf. ■



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trust, to talk to and be each other’s reality check,” he said. “You treasure such colleagues when you find them.”

Clements & Pineault LLP, located on Federal Street in Boston, will focus on white-collar criminal defense, government and internal investigations, business litigation and advice, appeals and related fields.

“I think one thing that sets us apart is the depth and breadth of experience and training we have had over our careers,” said Pineault, who noted that both have been in

public and private practice, acted as prosecutors and defense attorneys in federal and state courts, held legal positions in government, and have jury and appellate trial experience. “We are fortunate to have had those opportunities. With our background and training, we can provide very high quality legal services in a small-firm setting that is efficient and cost-effective.”

“We work so well together because our approach to issues is similar,” added Pineault. “This really results in a lot of trust in each other’s judgments. We can bounce things off of each other, which is something that I value tremendously.” ■

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