MASSACHUSETTS FAMILY LAW
A Periodic Review
By Jonathan E. Fields

Postnups OK'd in Massachusetts (or "the Fogg has Lifted") Nearly 20 years ago, in the *Fogg* case, the SJC "left to another day" the question of whether postnuptial agreements were valid in Massachusetts. Well, that day has come. The SJC has finally resolved the long-deferred question by approving such agreements so long as certain requirements are met. Among such requirements, according to the SJC, the court must find that the agreement was fair and reasonable at the time of signing *as well as* at the time of enforcement. In permitting such agreements, Massachusetts appears to be in line with the majority of states. Readers interested in an in-depth treatment of the new case are directed to Bill Levine's terrific article at the beginning of this issue. *Ansin v. Craven-Ansin*, 457 Mass. 283 (July 16, 2010)

Counting Parenting Time (Even When the Kids are Sleeping) In trying to equalize a parenting schedule, do you count "sleep time" and "school time" or only "awake time"? In a modification action, a Probate and Family Court judge changed the parenting schedule without finding a change in circumstances on the theory that the percentage of "awake time" (time that the "children were not at school, camp, or awake") spent with each parent was roughly equivalent to the previous schedule. The Appeals Court reversed, noting that the law has not "neatly divided custodial parenthood into waking, sleeping, and schooling categories. Nor should it. Disregarding sleep or school time ignores that children get sick, have nightmares, and otherwise require their parent's assistance at unexpected times." Parents are always "on call," the Appeals Court continued: "[t]he responsibilities of a parent do not end when a child is asleep, at school or day care, or otherwise outside of the parent's presence." *Katzman v. Healy*, 77 Mass.App.Ct. 589 (September 7, 2010).

Imputing Income and Divorce Planning. The Appeals Court affirmed a judgment in which the trial court refused to impute income to a wife who was working an 80% schedule at the time of trial and who was earning an annual salary of over $500,000. The Appeals Court was impressed that throughout the marriage, she had often reverted from full-time to reduced-time and that the current schedule was not the result of "divorce planning." *Lanes v. Jagolta*, 2010 Mass.App.Unpub. LEXIS 1069 (September 24, 2010) (Unpublished)

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