Not an Arbitrary Decision

Bulkley Richardson Launches Alternative Dispute Resolution Group

By George O'Brien

John Greaney spent more than four decades behind various benches — everything from this region's first Housing Court to the state Supreme Judicial Court. Desiring to take advantage of all that judicial experience, the Springfield-based firm Bulkley Richardson, which Greaney joined in 2016, has created an alternative dispute resolution (ADR) group, which he will lead. As arbitration and mediation become ever-more popular methods for resolving disputes, the firm sees this group as a solid business venture.

John Greaney, who was forced to retire from the state Supreme Judicial Court as he turned 70, is definitely not the retiring type.

Peter Barry says it's a rare opportunity when a small (at least in comparison to outfits in Boston, New York, and Philadelphia) Western Mass. law firm can add a former Massachusetts Supreme Court justice to its team.

Rarer still is an opportunity to add a jurist with the breadth and experience brought to the table by John Greaney, who retired from the SJC in 2008, capping nearly 35 years on various benches, starting with the Hampden County Housing Court (which he started) and time on the Superior Court and then the Appeals Court (more on that remarkable career later).

So it's incumbent on a firm granted that opportunity to take full advantage of it, said Barry, managing partner with Springfield-based Bulkley Richardson, adding that the firm is doing just that by launching an alternative dispute resolution (ADR) group.

This is a move that not only capitalizes on Greaney's deep reservoir of experience, but serves as a logical — and, yes, opportunistic — response to an ongoing trend within the law to settle matters not in the courtroom, but outside it, through mediation and arbitration.

These are routes that are generally quicker and less expensive than litigation, said Greaney, adding that ADR, as it's known, has become increasingly popular in realms ranging from healthcare to construction; education to sports. Yes, some of Major League Baseball's biggest rising stars have their salaries determined by arbitrators (after negotiation fails).

> *"It's a natural progression for this law firm to begin an ADR group."*

Greaney and Barry believe the firm could well become an attractive alternative (there's that word again) amid a growing number of options for businesses, institutions, and sports leagues desiring to resolve matters through ADR, and for several reasons.

Chief among them is the expertise it offers — from not only Greaney, but also Barry, who has been involved in the mediation and arbitration of several complex matters, and the other lawyers at the firm.

But that expertise also comes at a sticker price well below what Boston and Harford firms would charge, an important consideration, said Barry.

"We're looking to be selective and get appropriate cases from Northern Connecticut, Central Massachusetts, and the Boston area," he said, noting that the firm already serves several clients in those markets, in part because of lower hourly rates.

Greaney, who will be teaming with Barry to handle many of the ADR matters that come to the firm, agreed, and said the timing and a host of factors were right for the launch of this venture.

"It's a natural progression for this law firm to begin an ADR group," he noted, adding that, apart from the Hampden County Bar Assoc., which has a panel of mediators and arbitrators, the only other mediators and arbitrators in this region are single-practice lawyers; Boston and Hartford have ADR groups, but this woud be the first in this region.

"There appears to be a need here for the right type of mediator and arbitrator," he said, adding that the firm intends to fill that void.

Barry agreed.

"There are a lot of mediators and arbitrators out there," he acknowledged. "But what we bring to the field is an expertise — pri-

marily Judge Greaney — that is not available generally and is suitable for certain types of cases in particular."

For this issue and its focus on law, *BusinessWest* talked with Greaney and Barry about Bulkey Richardson's new ADR group, and also about how arbitration and mediation are becoming increasingly popular — and effective — methods for solving complex legal disputes.

Making Their Case

For those not familiar with Greaney's background (and many are), it takes more than a few column inches, as they say in the print media, to capture all he's done during his career.

So we'll hit the highlights. But even that will take a while.

The Westfield native began his law career with the Springfield-based firm Ely and King in 1964, and was appointed to the Hampden County Housing Court in 1974. That housing court was the second in the state, with the first being in Boston, and was unique in that it served an entire county.

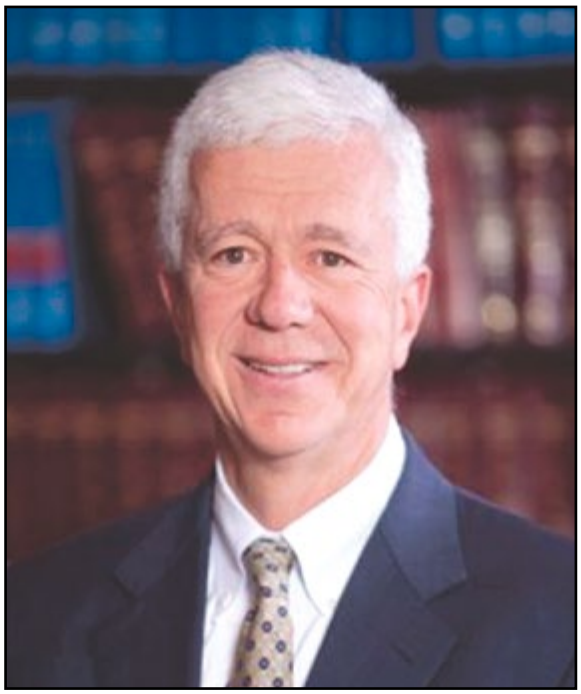
"We decided to innovate considerably," he recalled. "We designed our own court forms, we changed them to get rid of all the legal language — which cluttered all the forms in the other courts — so people could understand them, and we made them bilingual because we had a large Spanish-speaking population. And, to the dismay of a lot of other courts and judges, we set up a citizen's advisory council — all to make the court more user-friendly."

In 1976, Gov. Michael Dukakis appointed Greaney to the Superior Court. This was followed by an appointment to the Appeals Court as an associate justice in 1978. In 1984, he became chief justice of the Appeals Court.

Greaney was appointed to the Supreme Judicial Court in 1989 and participated in several landmark cases while serving on the SJC. That list includes *Goodridge v. Department of Public Health*, in which he wrote the concurrence to the opinion establishing Massachusetts as the first state in the nation to legalize same-sex marriage.

"We share a common humanity and participate together in a social contract that is the foundation of our Commonwealth," he wrote, creating language that has been used often by gay couples at their wedding ceremonies. "Simple principles of decency dictate that we extend … full acceptance, tolerance, and respect. We should do so because it is the right thing to do."

Other significant cases include a 1993 decision upholding the adoption of a child by same-sex cohabitants; a 1997 decision in the *Benefit v. City of Cambridge* case, affirming the unconstitutionality of a statute prohibiting panhandling; a 2003 decision in the First Justice case addressing, on separation of powers principles, the constitutionality of statutes governing court clerks and probation officers; and a 2007 decision in the *Murphy v. Boston Herald* case, affirming a judgment based on defamation.



Peter Barry says ADR is an area of the law that is growing and will continue to grow as businesses and individuals seek alternatives to litigation.

"There are a lot of mediators and arbitrators out there. But what we bring to the field is an expertise — primarily Judge Greaney — that is not available generally and is suitable for certain types of cases in particular."

Greaney, famous for taking a Peter Pan bus to and from Boston most days and using that time to get more work done, reached mandatory retirement age (70) in 2008, but he wasn't, and still isn't, the retiring type. He joined the faculty of Suffolk University Law School, served as director of the Macaronis Institute for Trial and Appellate Advocacy, and taught constitutional law, criminal law, and appellate practice.

But he became a victim of the financial pressures facing many law schools today, and as Suffolk Law downsized and Greaney's position was essentially eliminated, the judge looked for something else to do in 'retirement.' And as he looked, he remembered that Francis 'Sandy' Dibble, a partner at Bulkley Richardson, had long ago told him that, when he was done teaching, he should consider joining the firm.

He did so, in 2016, and thus went back to where he started (well, sort of) — practicing law in downtown Springfield.

But the legal landscape has certainly changed since Greaney first started out as a lawyer more than a half-century ago. Indeed, ADR has become an increasingly popular alternative to the courtroom, one that resolves matters in months, or even weeks, rather than years.

A Strong Case for ADR

There are two basic forms of ADR, mediation and arbitration, and while they are similar in that they are alternatives to traditional litigation, there are important differences.

Mediation is generally conducted with a single mediator who does not judge the case but instead simply helps the parties facilitate discussion and, hopefully, a resolution to a problem. Arbitration, on the other hand, is more judicial in nature (that's why Greaney said it appeals to him) and involves one or more arbitrators who take on the role of a judge, making decisions about evidence and giving written opinions, which can be binding or non-binding, with the results being final.

"The shift from actual courtroom litigation and the resolution of disputes prior to courtroom litigation has become a fairly active enterprise over the past 12 years or so," Greaney explained. "When I was a trial judge, no such thing existed.

"But the phenomenon was created by business people and others," he went on. "And the courts wanted to see a simpler, more efficiently way to deal with the problems they had."Also, many contracts — for everything from construction projects to employment agreements to the one signed by Stormy Daniels when she received $130,000 from Presisdent Trump's personal lawyer, Michael Choen — have provisions

noting that there if problems arise, they will be resolved by private arbitration and not litigation, Greaney told *BusinessWest*, adding that the Supreme Court, with a few exceptions, has consistently upheld the validity of these arbitration clauses."

And as a result, and many law firms and individuals, including many retired judges, now specialize in mediation and/or arbitration (mostly the former), creating a somewhat competitive market for those services.

Bulkley Richardson looks to stand out within that playing field and capitalize on the experience of both Greaney and Barry as well as a host of other attorneys within the firm, including Dibble, Daniel Finnegan, Kevin Maynard, David Parke, Melinda Phelps, Jeffrey Poindexter, and John Pucci.

Barry said the firm is not interested in taking on cases that could easily be handled by one of the other mediators in the region, and is instead interested in more complex matters. And, again, they could come from within the 413, or well outside it given the expertise the firm can now bring to bear.

And because of how the pendulum has swung toward ADR, there should be ample opportunity to grow the practice.

"ADR is an area that's growing and will continue to grow, and there will be a need for the types of services we'll provide," he explained. "A lof of big companies have decided, almost across the board as a policy, that they're not going to litigate — they're going to do everything possible to settle a case because of the expense and time and misdirection of resources involved in litigation."

Final Arguments

Getting back to Major League Baseball and those high-profile salary disagreements going to arbitration … and Greaney, an ardent Red Sox fan, noted with a laugh that he would love to get such a matter sent to Bulkley Richardson.

"I love sports; that would be a delight to get something that," he told *BusinessWest*. "I understand the statistics and all that goes into those decisions."

While landing such a case might be a long shot (that's might), it seems a much safer bet that Bulkley Richardson's launch of an ADR group will be a winning proposition — for the firm and the region as well.

That's because of the uniquely high level experience that can brought to the table, especially from a judge that that has made his mark in settings ranging from Hampden County Housing Court to the SJC.

The jury is in — ADR is now the preferred method of resolving a dispute — and Bulkley Richardson appears well-positioned to capitalize on that movement. ◆

George O'Brien can be reached at obrien@businesswest.com

Staff Photo

John Greaney, left, and Peter Barry say the ADR group is a natural progression for Bulkley Richardson.