LAREDO & SMITH, LLP

February 24 2016

**By Hand**

Suffolk Superior Court
Civil Clerk's Office
3 Pemberton Square #13,
Boston, MA, 02108

Re: Lustig, Glaser & Wilson, P.C. v. David J. Cotney, in his capacity as the Commissioner of Banks and Massachusetts Division of Banks
Civil Action No. 15-3703 BLS

Dear Sir/Madam:

Enclosed for filing please find Plaintiff's Motion for Judgment on the Pleadings; and Plaintiff's Memorandum in Support of Its Motion for Judgment on the Pleadings.

Thank you for your attention to this matter.

Very truly yours,

Mark D. Smith

MDS/ld
Enclosures
cc: Suleyken D. Walker, Assistant Attorney General (by hand)

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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| LUSTIG, GLASER & WILSON, P.C.,<br><br>Plaintiff,<br><br>v.<br><br>DAVID J. COTNEY, in his capacity as the Commissioner of Banks, and MASSACHUSETTS DIVISION OF BANKS,<br><br>Defendants. | C.A. No. 15-03703-BLS |

**PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Mass. R. Civ. P. 12(c), Plaintiff Lustig, Glaser & Wilson, P.C. ("LGW") moves for judgment on the pleadings against Defendants David J. Cotney, in his capacity as the Commissioner of Banks and the Massachusetts Division of Banks (together, "Defendants") on grounds that Defendants' admittedly "new interpretation" of the debt collector licensing law G.L. c. 93, §24 (the "Statute") (1) contradicts the plain language of the Statute, its implementing regulations, and Defendants' prior interpretations of the Statute; (2) violates the separation of powers mandate in Art. XXX of the Massachusetts Constitution's Declaration of Rights; and (3) violates LGW's right to due process under 42 U.S.C. § 1983 and G.L. c. 12, § 11I. A memorandum of law in support of this motion is submitted herewith.

For the above stated reasons, and the reasons set forth in the accompanying memorandum of law, Plaintiff's motion for judgment on the pleadings should be granted.

LUSTIG, GLASER & WILSON, P.C.,

By its attorneys,

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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| LUSTIG, GLASER & WILSON, P.C., Plaintiff, v. DAVID J. COTNEY, in his capacity as the Commissioner of Banks, and MASSACHUSETTS DIVISION OF BANKS, Defendants. | C.A. No. 15-03703-BLS |

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS**

Introduction

This action arises from the Massachusetts Division of Banks's (and its Commissioner's) (together, "Defendants") purported reinterpretation of a statute governing debt collectors, G.L. c. 93, § 24 (the "Statute").[1] Although for the past century the plain language of the Statute (and its predecessors) has unequivocally excluded Massachusetts-licensed lawyers from the definition of "debt collector," in November 2015 Defendants adopted "a new interpretation" of the term

[1] The Statute defines "Debt collector" as follows:

> any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (f), debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. *Debt collector shall not include:--*
>
> *(g) attorneys-at-law collecting a debt on behalf of a client;* .... (emphasis added)

"debt collector," claiming that the exclusion no longer applies to attorneys practicing law in Massachusetts who regularly collect debts on behalf of a client, and that therefore those attorneys must register as debt collectors with the Division of Banks. This new interpretation, however, directly contradicts the plain language of G.L. c. 93, § 24 and the Division's own regulations; violates Art. XXX of the Massachusetts Declaration of Rights, 42 U.S.C. § 1983, and G.L. c. 12, § 11I; and is contradictory to Defendants' prior interpretations of the Statute. Accordingly, this court should declare that (a) the Defendants' new interpretation of the statutory exemption set forth in § 24(g) is erroneous and (b) as a consequence LGW is not required to register as a debt collector.

## Statement of Facts and Prior Proceedings[2]

Plaintiff Lustig, Glaser & Wilson, P.C. ("LGW"), is a law firm organized as a professional corporation under the laws of the Commonwealth of Massachusetts whose Massachusetts-licensed attorneys concentrate their practice in the area of consumer debt collection on behalf of the firm's clients. (1st Am. Compl. ¶ 2, Exh. D at 1; Ans. ¶ 2.) Defendant David J. Cotney is the Massachusetts Commissioner of Banks (the "Commissioner") (1st Am. Compl. ¶ 3; Ans. ¶ 3.) The Commissioner oversees the Massachusetts Division of Banks and is responsible for the licensing and supervision of "debt collectors" pursuant to G.L. c. 93, §§ 24-28 and the implementation of the Division of Banks's regulations. (1st Am. Compl. ¶ 4; Ans. ¶ 4.) Defendant Massachusetts Division of Banks (the "Division"), is the Massachusetts agency charged with the licensing and supervision of "debt collectors" pursuant G.L. c. 93, §§ 24-28, including the implementation and oversight of 209 CMR §§ 18.00 *et seq.* (*Id.*)

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[2] The facts are drawn from the First Amended Verified Complaint ("1st Am. Compl.") and its exhibits, as well as the Answer to the First Amended Verified Complaint ("Ans."). Copies of the First Amended Complaint with exhibits and the Answer are attached for the Court's convenience as Exhibits 1 and 2, respectively.

On September 19, 2013, LGW's managing attorney, Kenneth C. Wilson, wrote to the Division of Banks requesting an opinion "as to whether or not [LGW] is required to obtain a so-called 'Debt Collection License' from the [Division] in order to engage in consumer debt collection activity in the Commonwealth." (1st Am. Compl. Exh. D, the "September 2013 Letter"; Ans. ¶ 9.) At the request of the Division, LGW supplemented the September 2013 Letter with additional information by email on October 21, 2013. (1st Am. Compl. Exh. E, the "October 2013 Email"; Ans. ¶ 10.)

Over two years later, on November 2, 2015, the Division informed LGW by letter of its opinion that LGW is a "debt collector" and is "required to be licensed as a debt collector in the Commonwealth under the provisions of Massachusetts General Laws chapter 93, section 24, through section 28, inclusive, as well as the Division's regulation 209 CMR 18.00 *et seq.*" (1st Am. Compl. Exh. F; Ans. ¶ 11.) Notwithstanding the plain language of the Statute, the Statute's implementing regulations, and the Division's own prior interpretations of the Statute and regulations, the Division concluded that since the exemption in the Statute states that it applies to ""attorneys collecting *a debt* on behalf of a client' rather than 'attorneys who *regularly* collect debts on behalf of a client,'" the exemption only applies to attorneys whose principal practice is not the collection of debts. (1st Am. Compl. ¶ 11.) The Division announced that it will make the "determination on a case-by-case basis" as to which attorneys and firms are exempt from the Statute. *Id.*

Recognizing that its opinion "is a new requirement," the Division's letter gave LGW and other "affected law firms" six months to register, to post a bond, and to obtain a license from the Division, after which time the Division threatens to enforce the licensure requirements and to consider "affected law firms" to be in violation of the licensing requirement. (1st. Am. Compl. ¶

12, Exh. F at 2.) Failure to comply with the registration, bonding, and licensure requirements applicable to "debt collectors" can lead to significant fines, imprisonment for the principals, and trigger violations of G.L. c. 93A, § 2. (1st Am. Compl. ¶ 12.)

## Argument

*A. The Defendants' interpretation of the Statute contradicts the plain language of the Statute, the Division's regulations, and the Division's prior interpretations of the Statute.*

For over a century, debt collection agencies in the Commonwealth have been regulated by statute, specifically under G.L. c. 93, § 24. Beginning with the original 1910 statute, however, attorneys admitted to practice law in the Commonwealth have been exempt from this statutory scheme. G.L. c. 93, § 24 (Ed. 1910); *see also* G.L. c. 93, § 24 (Ed. 1949), G.L. c. 93, § 24 (Ed. 1967), and G.L. c. 93, § 24 (Ed. 1975).[3] The current version of the statute, last substantively amended over a decade ago, continues this exemption, stating in § 24(g) that "attorneys-at-law collecting a debt on behalf of a client" are not "debt collectors" within the meaning of the Statute.[4]

Consistent with the plain language of the Statute, the Division's regulations exempt from the definition of "debt collector" any "attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client." 209 CMR § 18.02(g). Those same regulations also state that "[n]o debt collector shall: (a) Furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others..." *Id.* at § 18.17(12). The Defendants' new interpretation therefore is completely contradictory to its own regulation and, if allowed to stand, leads to the

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[3] Copies of the statutory revisions are attached as Exhibit 3.

[4] Debt collection practices also have been regulated by the Attorney General under General Laws chapter 93A. Those regulations are not at issue in this case.

absurd result that LGW as a debt collector will not be able to advise its clients or initiate court actions on their behalf.

The Division's published opinions also have been clear that the Statute and regulations mean what they say – lawyers engaged in the practice of law in the Commonwealth are not debt collectors. Indeed, when a prior banking commissioner claimed that LGW was required to register as a debt collector, he recognized the fallacy of the Division's demand and ceased his efforts after LGW brought to his attention that LGW was exempt under the plain language of the Statute and regulations. (1st Am. Compl. Exhs. B and C.) In that October 13, 2006 opinion identified by the Division as "Selected Opinion 06-059," published on the Division's section of the Mass.gov website, the Division recognized that the "attorney-at-law" exclusion contained in G.L. c. 93, § 24 "applies . . . to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth." (1st Am. Compl. Exh. A at p. 1.) As the Division correctly recognized in 2006, "[a]ttorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers." *Id.* The Division further recognized that "[a]ttorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the [Federal Fair Debt Collection Practices Act] and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq.*" *Id.*

Over the years, the Division has repeatedly recognized the exemption carved out for attorneys licensed to practice law in the Commonwealth. *See e.g.*, Feb. 10, 2012 letter ("Please note the Division's opinion 06-059 does not require an attorney, acting on behalf of a client, to be licensed as a debt collector in the Commonwealth assuming that they are licensed in the

Commonwealth to practice law."); Apr. 19, 2012 letter (same); Nov. 1, 2012 letter ("[a debt buyer] is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by ... an attorney-at-law licensed to practice law in the Commonwealth."); and Mar. 4, 2014 (citing Oct. 13, 2006 and Nov. 12, 2012 letters).[5] [6]

Defendants cannot now claim that law firms like LGW – that are comprised of Massachusetts-licensed attorneys and concentrate their practice in the area of consumer debt collection *on behalf of their clients* – are excluded from the exemption expressly provided for by the legislature simply because the firm collects more than "*a debt*".[7] The Defendants' new interpretation simply fails the test of plausibility. If the objective of statutory interpretation is to

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[5] Copies of the referenced letter opinions are attached at Exhibit 4.

[6] The Division of Banks website as of February 12, 2016 continues to state that ". . . attorneys collecting debt are not subject to the Commonwealth's Debt Collection Law . . . ." This court may take judicial notice of this fact. *See* Section 201(b)(2) of the Mass. Guide to Evid. (2015) ("a court may judicially notice a fact that is not subject to reasonable dispute because it ... (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned;" *Commonwealth v. Green*, 408 Mass. 48, 50 n.2 (1990) ("a subject of generalized knowledge readily ascertainable from authoritative sources [is] thus appropriate for judicial notice"); s*ee also O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) ("It is not uncommon for courts to take judicial notice of factual information found on the world wide web."); *Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005) (court may take judicial notice of "the state agency's own website.").

[7] G.L. c. 4, § 6 provides that in construing statutes, words importing the singular may extend and be applied to several persons or things unless their observance is inconsistent with the manifest intent of the legislature. *See, e.g., In re Adoption of Tammy*, 416 Mass. 205, 211-12 (1993) (adoption statute permitting "a person" to file petition – without expressly prohibiting joint petitions – permits two unmarried individuals to file jointly because the plural construction accomplishes the legislative goal of promoting the best interests of the child). To the extent that Defendants here claim that the phrase "*a debt*" limits protection to attorneys who represent clients seeking to collect a single debt, construing § 24 to also protect attorneys who represent clients seeking to collect "*debts*" is consistent with the legislature's intent to exempt from the Division's licensing requirements those who are regulated by the Supreme Judicial Court and the Board of Bar Overseers in the practice of law.

ascertain the intent of the Legislature,[8] it is simply not credible that the language of § 24(g) - first adopted in 1910 and preserved in every statutory revision since then - was intended to convey an exemption only for very occasional or incidental debt collection activities by Massachusetts lawyers.[9] As the Supreme Judicial Court recently stated, "[i]n interpreting the meaning of a statute, we look first to the plain statutory language." *DiCarlo v. Suffolk Const. Co., Inc.*, __ Mass. ___, __ N.E.3d ___ , 2015 WL 10045032 (Feb. 12, 2016) (citations omitted).[10] Here, the plain statutory language leads to only one plausible conclusion: a Massachusetts-licensed attorney is exempt *whenever* he or she attempts to collect "a debt" for a client, regardless of the frequency of such attempts. Accordingly, the court should so declare and rule that LGW is not required to register as a debt collector with the Division of Banks.

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[8] *Franklin Office Park Realty Corp. v. Comm'r of Dep't of Envtl. Prot.*, 466 Mass. 454, 461 (2013) (in interpreting statutory language, courts look "to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.")

[9] When the Legislature intends to exempt otherwise regulated activity only when undertaken on an incidental basis, it knows how to express that intent. *See* G.L. c. 3, § 39 (definition of "legislative agent" subject to registration to "include a person who, as part of his regular and usual business or professional activities *and not simply incidental thereto*, engages in legislative lobbying,")

[10] Moreover, the Statute includes a similar exemption under subsection (c) for federal and state employees attempting to collect "a debt" in the performance of their official duties. Under Defendants' new interpretation, government employees could only collect a single debt or only engage in sporadic debt collection activities for government agencies without submitting to the Commonwealth's debt collector licensing requirements.

*B. Defendants' "new interpretation" of section 24 violates the separation of powers mandate in Art. XXX of the Massachusetts Constitution's Declaration of Rights.*

Narrowing the section 24(g) exemption for Massachusetts attorneys impermissibly encroaches on the judiciary's broad authority to regulate the practice of law. Specifically, Art. XXX of the Declaration of Rights provides:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Under the distribution of powers mandate, the "ultimate power of general control" over the practice of law falls to the judicial department. *Collins v. Godfrey*, 324 Mass. 574, 576 (1949). To maintain this demarcation, the legislature cannot promulgate statutes that deprive the judiciary of its authority over the activities of Massachusetts-licensed lawyers. *Id.* In other words, with respect to this litigation, the critical inquiry is whether the licensing requirement imposed by Defendants' "new interpretation" interferes with the judiciary's functions. *See Opinion of the Justices*, 365 Mass. 639, 645 (1974).

A recent decision of the Connecticut Supreme Court is instructive. In *Persels & Assocs., LLC v. Banking Comm'r*, the Supreme Court of Connecticut held that a law firm's debt negotiation services constituted the practice of law, and thus an exemption that narrowed the protection for the law firm and its attorneys was unconstitutional to the extent that it permitted non-judicial regulation of the firm's services. 122 A.3d 592, 594 (Conn. 2015) (a copy of the opinion is attached as Exhibit 5). Under Connecticut's debt negotiator licensing laws, any person offering to provide or providing debt negotiation services is required to first obtain a license from the Department of Banking. *Id.* Much like G.L. c. 93, § 24(g), Connecticut's

original version of the statute exempted from licensing requirements "any attorney admitted to the practice of law in this state, when engaged in such practice...." *Id.* at 596. In response to the residential mortgage foreclosure crisis, the legislature amended that exemption to extend only to an "attorney admitted to the practice of law in this state who engages or offers to engage in debt negotiation *as an ancillary matter to such attorney's representation of a client.*" *Id.* Shortly after, plaintiff law firm sought a declaratory ruling that the amended exemption was unconstitutional because it permitted non-judicial regulation of the law firm's debt negotiation services and the conduct of its Connecticut-licensed attorneys. *Id.*

The Connecticut Supreme Court agreed that the debt negotiator licensing statute and the narrowed exemption impermissibly assumed the judicial department's constitutional prerogative to decide who shall enjoy the privilege of practicing law in the state. *Id.* at 603. The court explained that the authority of the legislature to regulate attorney conduct is limited to "the entrepreneurial or commercial aspects of the profession of law." *Id.* at 604. The regulation of the actual practice of law, by contrast, is within the purview of the judiciary. *Id.* As is the case with LGW's debt collection services, because the *Percels* law firm's debt negotiation services were inseparably bound together with giving legal advice to its clients, regulation of the law firm and its attorneys fell under the exclusive authority of the judicial branch. *Id.* at 605-06.

Here, LGW's Massachusetts attorneys concentrate their practice in consumer debt collection. (1st Am. Compl. Exh. D.) The firm's attorneys identify themselves as attorneys for debt owners, make calls and direct written communication to debtors, and when authorized by the owner of the debts, conduct litigation in the name of the true owner of the debt. *Id.* These debt collection activities are inseparably bound to rendering legal advice and representing clients in the courts of the Commonwealth - in short, they amount to the practice of law and, as such,

they fall within the exclusive province of the judiciary. Accordingly, Defendants' "new interpretation" of G.L. c. 93, § 24(g), purporting to exclude LGW and its attorneys from engaging in activities that the judiciary permits as the practice of law, violates the separation of powers under Art. XXX.

*C. The Division should not be allowed to rewrite the law through its new interpretation of the Statute.*

An administrative agency may not rewrite a statute simply because it no longer likes its language, particularly where its new "interpretation" is created years after the statute's enactment and is inconsistent with the agency's repeated application to the contrary.

The case of *Gibbons v. Galvin* is quite instructive on this issue. 31 Mass. L. Rptr. 329 (Feb. 4, 2013) (a copy of the Gibbons opinion is attached as Exhibit 6). In *Gibbons*, the plaintiffs challenged the Secretary of the Commonwealth's new-found claim that a statute requiring lobbyists to disclose "all *direct business associations* with public officials" also required disclosure of all *communications* with a public official or legislator. 31 Mass. L. Rptr. 329 (Feb. 4, 2013) (emphasis added). Under G.L. c. 3 § 39, a statute that became effective on January 1, 2010, lobbyists were required to file with the Secretary of the Commonwealth a form statement containing, *inter alia*, "all direct business associations with public officials." *Id.* at 1. For the next five reporting periods, the plaintiff lobbyists indicated that they had no business association with a public official by entering "None" or "N/A" in the applicable box without objection from the Secretary. *Id.* In July 2012, two and a half years after the statute's enactment, the Secretary unilaterally declared that a response of "None" or "N/A" would not be correct if plaintiffs had any "communications" with any public official or legislator. *Id.* at 2. The Secretary took the position, without support in the plain language of the statute or its legislative

history, that plaintiffs were required to disclose mere communications even though they had no relationship with the public officials. *Id.*

In granting judgment in favor of the *Gibbons* plaintiffs, the court ruled that while the statute in question in *Gibbons* did not define "business association," given the plain meaning of that phrase as well as the legislative intent to eradicate the danger that a lobbyist and a government official could be involved in a secret commercial or financial transaction, the Secretary's new interpretation was at odds with the statute's language and intent and rejected the Secretary's over-inclusive position that mere communications were implicitly included in the term "business association." *Id.* at 3-4. In so ruling, the court also noted that the Secretary had tried, and failed, to persuade the legislature to amend the statute to include communications in the definition of what had to be reported. The court held that the Secretary could not accomplish "by administrative fiat" what he could not achieve through the legislative process. *Id.* at *4.

Here too, Defendants are attempting to rewrite the law, claiming that despite the plain language of G.L. c. 93, § 24(g) specifically exempting "attorneys-at-law collecting a debt on behalf of a client" from having to register as debt collectors, LGW and other similarly situated law firms must now register as debt collectors. This stance, just like the Secretary's claims in *Gibbons*, is untenable. Since its origin in 1910, through various amendments in 1949, 1967, 1975, and 2004, the statute has been clear and unequivocal. Never has the legislature chosen to limit the exemption for Massachusetts-licensed attorneys based on "the amount of a law firm's debt collection activity" as claimed by Defendants. (1st Am. Compl. Exh. F at 2.) Indeed, the Division itself apparently understood that this was the law, as evidenced by its own written opinions. Only in November 2015 did Defendants unilaterally determine that the legislature intended to limit the exception to attorneys who only collect *a single debt* on behalf of *a single*

*client*. *Id.* ("[T]he Division has determined that the attorney-at-law exemption from debt collector licensing requirements provides a narrow exception for Massachusetts licensed attorneys engaged in debt collection activities ... [turning] on the extent of the debt collection activity conducted by the firm.") As was the case in *Gibbons*, Defendants' narrowing of the exemption for attorneys *simply because the attorneys litigate their clients' debts in a law firm setting* is plainly contradictory to the language of the statute as it has existed for over one hundred years. Where the legislature has spoken in no uncertain terms that *all* attorneys licensed in Massachusetts engaged in collecting debt for their clients do not qualify as "debt collectors" subject to licensing requirements under Ch. 93, Defendants cannot restrict the exemption to attorneys who only collect a single debt; doing so accomplishes "by administrative fiat" what the legislature has elected not to restrict. *See Gibbons*, 31 Mass. L. Rptr. 329 at *4.

*D. Defendants are estopped from applying the admittedly "new interpretation" of the Statute because it contravenes their own prior opinions and is unsupported by law.*

A government agency may not take a position contrary to its own prior interpretations of law, where there has been no change in the law, and constituents have relied to their detriment on those interpretations. For instance, in *Comm'r of Rev. v. BayBank Middlesex*, the Supreme Judicial Court held that a number of Massachusetts and national banks were permitted to rely on the banking commissioner's prior treatment of excise tax for premiums paid for certain tax-exempt bonds, where the commissioner noticed tax-interest assessments based on a new policy in clear contradiction to its previous position. 421 Mass. 736, 743 (1996). The commissioner in that case claimed that, despite decades of allowing deductions of tax-exempt bond premiums, he was nonetheless permitted to change his policy and assess back taxes to correct "mistakes of law" and continue taxing exempt bond premiums even though the policy change was based on an entirely new interpretation of existing revenue statutes and regulations. *Id.* at 738-41. The court

rejected that effort, ruling that where the commissioner's attempt to change his interpretation of the statute did not arise from a change in circumstances of the taxpayer nor from a change in statutory law, the court could not sanction the commissioner's decision to "simply change course" when the banks had relied to their detriment on the commissioner's previous position. *Id.* at 743.

Likewise, in *Boston Gas Co. v. Dep't of Pub. Utils.*, the Supreme Judicial Court refused to allow the Department of Public Utilities to unilaterally change its position regarding the calculation of an undepreciated investment where the department admitted that it had changed its position for the first time, despite permitting inclusion of the same unamortized balance in the company's rate base in the three previous rate proceedings. 367 Mass. 92, 97-98 (1975). Where the department had made no finding or ruling that the prior schedules for depreciating the retired plant were erroneous or inappropriate in any manner, it could not "according to whim or caprice" reverse course and subject the company to "erratic changes in treatment" under the same, unchanged legal framework. *Id.* at 104; *see Sullivan v. Chief Justice for Admin. and Mgmt. of Trial Ct.*, 448 Mass. 15, 23 (2006).[11]

Here, in their November 2015 opinion letter, Defendants took a position wholly contrary to their prior interpretation of § 24(g) which had excluded attorneys-at-law practicing in the Commonwealth from debt collector licensing requirements. Like the banks in *BayBank*

[11] *See also Chilson v. Zoning Bd. of Appeal of Attleboro*, 344 Mass. 406, 409 (1962) (estopping the zoning board of appeal from rescinding previously-issued permits based on one interpretation of statutory exemptions where the landowners had relied on the permit for at least nine years and it would be was "unjust and unreasonable" to allow a different interpretation of the same exemptions); *New England Power Co. v. Bd. of Selectmen of Amesbury*, 389 Mass. 69, 74-75 (1983) (agreeing with plaintiff electric company that the town board was without authority to rescind previously granted petitions authorizing the construction of overhead transmission lines, where there was no statutory support for rescinding grants, and the company reasonably relied on the issued permits.)

*Middlesex*, LGW has relied to its detriment on Defendants' prior position exempting attorneys and law firms from licensing requirements under G.L. c. 93, § 24 and 209 CMR § 18.02(g).

The statute is clear: the legislature intended for Massachusetts attorneys to be exempted from debt collector licensing requirements, and it has elected to continue that exemption despite several revisions and amendments to the Statute. *See* Exh. A. Defendants' "new interpretation" is not based on any factual change in circumstance – LGW has always been, and continues to be, staffed by Massachusetts attorneys who assist the law firm's clients in collecting consumer debts. Neither is Defendants' "new interpretation" based on any change in statutory or regulatory authority, nor in any subsequent clarification of legislative intent. Accordingly, absent justifying changes in the law or other relevant circumstances, Defendants may not abandon their prior position, repeatedly expressed in public assurances designed to induce reliance that Massachusetts attorneys are not subject to debt collector licensing requirements. Defendants must not be permitted to reverse course based on whim or caprice, nor be allowed to subject LGW and other similarly situated law firms to erratic and unsupported changes in treatment under G.L. c. 93, § 24 and 209 CMR § 18.02(g).

*E. Defendants' "new interpretation" of section 24 violates LGW's right to due process as afforded under 42 U.S.C. § 1983 and G.L. c. 12, § 11I.*

Defendants' threats to enforce the "new interpretation" of the Statute and regulations require LGW to submit to their unlawful oversight imposes burdensome regulatory requirements not authorized by law. In so doing, Defendants have acted arbitrarily and without reasoned consistency, thus violating LGW's due process rights under the Constitutions and laws of the United States and the Commonwealth of Massachusetts.

Businesses in the Commonwealth have the right to conduct their activities, and in connection therewith, to be subject to rational, reasoned, and consistent application of the

relevant laws and regulations. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) (when considering a radically new governmental interpretation of a pre-existing statute, the court must consider the government's ability to "sweep away settled expectations suddenly and without individualized consideration"). Where the business is regulated by a governmental agency, it is entitled to "expect and obtain reasoned consistency in the agency's decisions." *Boston Gas Co.*, 367 Mass. at 104. The justifiable expectation of reasoned consistency is a facet of the fundamental fairness assured by the Due Process clauses of the U.S. Constitution and the Massachusetts Declaration of Rights.[12]

Defendants' arbitrary exclusion of Massachusetts-licensed attorneys and their law firms from the protection afforded them under G.L. c. 93, § 24(g) – *despite the fact that the statute, on its face, provides for such exemption* – violates LGW's due process rights because this "new interpretation" is not authorized by law, is contrary to the Division's own precedents and regulations, and is not justified under the principle of reasoned consistency. By proposing a radically "new interpretation" of the exemption, Defendants have impinged on LGW's right to conduct business without being subject to irrational, unreasoned, and inconsistent application of the law. Defendants have also threatened LGW, in no uncertain terms, to "immediately cease engaging in any unlicensed or unauthorized debt collection activity in Massachusetts until such time as [LGW has] obtained a license through the Division's normal application process." (1st

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12 *See, e.g.*, *Schad v. Arizona*, 501 U.S. 624, 637 (1991) (referring to "the concept of due process with its demands for fundamental fairness … and for the rationality that is an essential component of that fairness"); *Doe v. Attorney General*, 426 Mass. 136, 146 (1997) (referring to "the principle of fundamental fairness that underlies the concept of due process of law").

Am. Compl. Exh. B.)[13] The threat of future sanctions arising from LGW not applying for, and receiving, a debt collector license will impermissibly encroach on LGW's right to practice law as authorized by the state judiciary, permit Defendants to assert unsanctioned supervisory power over LGW, and subject LGW to inconsistent and unreasoned application of G.L. c. 93, § 24. As a direct and proximate result of Defendants' unsupported determination that LGW is a "debt collector" subject to Defendants' oversight, LGW will suffer injury in the nature of (1) forced submission to unlawful and potentially inconsistent oversight, and (2) serious statutory penalties, potential imprisonment of its officers, and *de facto* violations of G.L. c. 93A, § 2. Accordingly, Defendants' "new interpretation" of the exemption for attorneys-at-law must be rejected as violating LGW's due process rights.

[13] The October 2, 2006 letter from the Division also gives LGW the option to demonstrate in writing why it is not subject to the debt collector licensing requirement, but the Division has since rejected LGW's argument for exemption. (1st Am. Compl. Exhs. C-F.)

## Conclusion

For the above stated reasons, this Court should issue an order (1) granting declaratory relief in favor of Plaintiff Lustig, Glaser & Wilson, P.C. and ruling that it is not a "debt collector" subject to regulation by the Massachusetts Division of Banks and the Commissioner of Banks, and that Plaintiff need not apply for a "debt collector license" and (2) enjoining Defendants from enforcing G.L. c. 93, §§ 24-28 and 209 CMR 18.00 *et seq.* against Plaintiff.

LUSTIG, GLASER & WILSON, P.C.,

By its attorneys,

Mark D. Smith, BBO# 542676
Marc C. Laredo, BBO# 543973
Matthew A. Kane, BBO# 666981
101 Federal Street, Suite 650
Boston, MA 02110
617-443-1100
smith@laredosmith.com
laredo@laredosmith.com
kane@laredosmith.com

Date: February 24, 2016

**CERTIFICATE OF SERVICE**

I, Mark D. Smith, hereby certify that true copies of the Plaintiff's Motion for Judgment on the Pleadings and Plaintiff's Memorandum in Support of Its Motion were served by delivering a copy hand to Assistant Attorney General Suleyken D. Walker, Government Bureau, One Ashburton Place, 20th Floor, Boston, MA 02108.

2-24-16
Date:

Mark D. Smith

# Exhibit 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

| | | |
|---|---|---|
| LUSTIG, GLASER & WILSON, P.C., | ) | |
| Plaintiff, | ) | |
| v. | ) | C.A. No. 15-03703-BLS |
| DAVID J. COTNEY, in his capacity as the Commissioner of Banks, and MASSACHUSETTS DIVISION OF BANKS, | ) | |
| Defendants. | ) | |

**FIRST AMENDED VERIFIED COMPLAINT**

## I. INTRODUCTION

1. This action arises from the Massachusetts Division of Banks's (and its Commissioner's) purported reinterpretation, over a century after its predecessor statute was first enacted and over a decade after its most recent substantive amendment, of a Massachusetts statute, now G.L. c. 93, § 24, governing debt collectors. Although the statute clearly and unequivocally states that law firms and lawyers are excluded from the definition of "debt collectors," the defendants have opined that they will adopt a new "interpretation" of the term "debt collector," claiming that the statutory exclusion does not apply to attorneys practicing law in the Commonwealth of Massachusetts who regularly collect debts on behalf of a client, and that therefore those attorneys must register as debt collectors with the Division of Banks. This new interpretation, however, directly contradicts the plain language of G.L. c. 93, § 24, the Defendants' own regulations, the Defendants' prior interpretations of the statute, and, finally,

the separation of powers principles set forth in Article XXX of the Massachusetts Constitution's Declaration of Rights. Accordingly, Lustig, Glaser & Wilson, P.C. is entitled to a declaratory judgment, vindication of its civil rights, an award of attorneys' fees, and injunctive relief against the Defendants.

## II. PARTIES

2. The Plaintiff, Lustig, Glaser & Wilson, P.C. ("LGW"), is a law firm organized as a professional corporation under the laws of the Commonwealth of Massachusetts and located at 245 Winter Street, Suite 300, Waltham, Middlesex County, Massachusetts.

3. The Defendant, David J. Cotney, is the Massachusetts Commissioner of Banks (the "Commissioner"). Mr. Cotney oversees the Massachusetts Division of Banks and is responsible for the licensing and supervision of "debt collectors" pursuant to G.L. c. 93, §§ 24-28 and the implementation of the Division of Banks's regulations. The Commissioner has a usual place of business at 1000 Washington Street, 10th Floor, Boston, Suffolk County, Massachusetts.

4. The Defendant, Division of Banks (the "Division"), is the Massachusetts agency charged with the licensing and supervision of "debt collectors" pursuant G.L. c. 93, §§ 24-28, including the implementation and oversight of 209 CMR §§ 18.00 *et seq.* The Division is located at 1000 Washington Street, 10th Floor, Boston, Suffolk County, Massachusetts.

## III. FACTS

5. For over a century, "debt collectors" in the Commonwealth have been regulated by statute, currently G.L. c. 93, § 24. Beginning with the original 1910 statute, however, attorneys admitted to practice law in the Commonwealth, have been exempt from this statute – an implicit recognition by the Legislature that conferring regulatory jurisdiction over attorneys

in the practice of law to an administrative agency is inconsistent with Article XXX of the Massachusetts Constitution's Declaration of Rights, which precludes the legislative and executive branches from exercising the powers reserved to the judicial branch of our government. The current version of the statute, G.L. c. 93, § 24, continues this exemption, stating in § 24(g) that "debt collector," the key term defining the scope of the Division's regulatory jurisdiction, "*shall not include* ... attorneys-at-law collecting a debt on behalf of a client" (emphasis added).

6. Consistent with the plain language of the statute, the Division's own regulations exempt from the definition of "debt collector" any "attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client." 209 CMR § 18.02(g). Those same regulations also state that "[n]o debt collector shall: (a) Furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others," 209 CMR § 18.17(12).

7. The Division has consistently made it clear that the statute and regulations mean what they say – lawyers engaged in the practice of law in the Commonwealth are not debt collectors. In a 2006 opinion identified by the Division as "Selected Opinion 06-059," published on the Division's section of the Mass.gov website, the Division recognized that the "attorney-at-law" exclusion contained in G.L. c. 93, § 24 "applies . . . to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth." As the Division correctly recognized in 2006, "[a]ttorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary

oversight of the Board of Bar Overseers." The Division further recognized that "[a]ttorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the [Federal Fair Debt Collection Practices Act] and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq.*" A true and correct copy of Selected Opinion 06-059 is attached hereto as Exhibit A and incorporated herein by reference. Likewise, later in 2006, when a prior banking commissioner claimed that LGW was required to register as a debt collector, he quickly ceased his efforts after LGW explained to him that LGW was exempt from the statute. True and correct copies of letters dated October 2, 2006 and October 3, 2006 are attached hereto as Exhibits B and C and incorporated herein by reference.

8. LGW is a law firm located in the Commonwealth of Massachusetts whose Massachusetts attorneys concentrate their practice in the area of consumer debt collection on behalf of the firm's clients.

9. On September 19, 2013, LGW's managing attorney, Kenneth C. Wilson, wrote to the Division of Banks requesting an opinion "as to whether or not [LGW] is required to obtain a so-called 'Debt Collection License' from the [Division] in order to engage in consumer debt collection activity in the Commonwealth" (the "September 2013 Letter"). A true and correct copy of the September 2013 Letter is attached hereto as Exhibit D and incorporated herein by reference.

10. At the request of the Division, LGW supplemented the September 2013 Letter with additional information by email on October 21, 2013 (the "October 2013 Email"). A true and correct copy of the October 2013 Email is attached hereto as Exhibit E and incorporated herein by reference.

11. Over two years later, on November 2, 2015, the Division informed LGW by letter of its opinion that LGW is a "debt collector" and is "required to be licensed as a debt collector in the Commonwealth under the provisions of Massachusetts General Laws chapter 93, section 24, through section 28, inclusive, as well as the Division's regulation 209 CMR 18.00 *et seq.*" Notwithstanding the plain language of the statute, the regulations interpreting the statute, and its own prior interpretations of the statute, the Division has now concluded that since the exemption in the statute states that it applies to "'attorneys collecting *a debt* on behalf of a client' rather than 'attorneys who *regularly* collect debts on behalf of a client,'" the exemption only applies to attorneys whose principal practice is not the collection of debts. The Division has announced that it will make the "determination on a case-by-case basis" as to which attorneys and firms are exempt from the statute. A true and correct copy of the Division's November 2, 2015 letter, identified its letter as "Selected Opinion 13-018," published on the Division's section of the Mass.gov website, is attached hereto as Exhibit F and incorporated herein by reference.

12. Recognizing that its opinion "is a new requirement," the Division's letter gives LGW and other "affected law firms" six months to register, to post a bond, and to obtain a license from the Division, after which time the Division threatens to enforce the licensure requirements and to consider "affected law firms" to be in violation of the licensing requirement. Failure to comply with the registration, bonding, and licensure requirements of Chapter 93 of the General Laws and the implementing regulations of the Division can lead to fines and imprisonment for a company and its principals and also can constitute an unfair or deceptive act or practice under the provisions of G.L. c. 93A, § 2.

## IV. CAUSES OF ACTION

**(Count I – Declaratory Judgment, G.L. c. 231A, § 1 – Statutory Interpretation)**

13. The foregoing paragraphs are incorporated herein by reference.

14. An actual controversy exists between the Plaintiff and Defendants concerning whether the Plaintiff is a "debt collector" as defined in G.L. c. 93, § 24, and therefore subject to regulation as a "debt collector" by Defendants.

15. The Defendants have exceeded their authority by asserting supervisory power over the Plaintiff.

16. As a direct and proximate result of the Defendants' determination that the Plaintiff is a "debt collector" subject to the Defendants' oversight, the Plaintiff will suffer injury in the nature either of (1) forced submission to unlawful oversight or (2) statutory penalties, potential imprisonment of its officers, and *de facto* violations of G.L. c. 93A, § 2.

17. The failure to resolve this controversy now will therefore inevitably lead to litigation after the expiration of the Defendants' six-month grace period for the Plaintiff's registration.

**(Count II – Declaratory Judgment, G.L. c. 231A, §1 – Separation of Powers)**

18. The foregoing paragraphs are incorporated herein by reference.

19. An actual controversy exists between the Plaintiff and Defendants concerning whether the Plaintiff is a "debt collector" as defined in G.L. c. 93, § 24, and therefore subject to regulation as a "debt collector" by Defendants.

20. If the Defendants' interpretation of "debt collector," as defined in G.L. c. 93, § 24, is correct, which LGW expressly denies, then the statutes at G.L. c. 93, §§ 24-28 violate Article XXX of the Massachusetts Constitution's Declaration of Rights.

21. Article XXX of the Massachusetts Constitution's Declaration of Rights provides that, "[i]n the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

22. Attorneys collecting debts on behalf of their clients are engaged in the practice of law.

23. The regulation of the practice of law, specifically including the representation of clients with respect to third parties and the initiation of legal process on their behalf, is an inherently judicial power.

24. If the statutes at G.L. c. 93, §§ 24-28 are an attempt by the Legislature to regulate the practice of law, as the Defendants contend, then they are unconstitutional.

25. As a direct and proximate result of the Legislature's impermissible efforts to regulate the practice of law, the Plaintiff will suffer injury in the nature either of (1) forced submission to unlawful oversight or (2) statutory penalties, potential imprisonment of its officers, and *de facto* violations of G.L. c. 93A, § 2.

26. The failure to resolve this controversy now will therefore inevitably lead to litigation after the expiration of the Defendants' six-month grace period for the Plaintiff's registration.

**(Count III – Violation of Civil Rights, 42 U.S.C. § 1983 and G.L. c. 12, § 11I)**

27. The foregoing paragraphs are incorporated herein by reference.

28. The Defendants have threatened Plaintiff with enforcement of the statutes and regulations applicable to "debt collectors" in an attempt to coerce the Plaintiff into submitting to the Defendants' unlawful oversight.

29. By imposing new and burdensome regulatory requirements not authorized by law and contrary to the Division's own precedents and regulations, and unjustified by any cause other than caprice, the Defendants have acted arbitrarily and without reasoned consistency, thus violating the Plaintiff's due process rights under the Constitutions and laws of the United States and the Commonwealth of Massachusetts.

30. The Defendants acted under color of state law.

31. The Plaintiff has been harmed as a direct and proximate result of the Defendants' actions.

**(Count IV – Injunctive Relief)**

32. The foregoing paragraphs are incorporated herein by reference.

33. The Plaintiff is likely to succeed on the merits of its claims for declaratory judgment and civil rights violations against the Defendants.

34. The Plaintiff will suffer irreparable harm if the Defendants are not enjoined from enforcing the statutes and regulations concerning "debt collectors" against them.

35. The balance of harms favors injunctive relief.

36. Public policy favors injunctive relief.

## V. DEMAND FOR RELIEF

WHEREFORE, the Plaintiff, Lustig, Glaser & Wilson, P.C., respectfully requests that the Court:

1. Enter a declaratory judgment (a) that Plaintiff is not a "debt collector" subject to regulation by the Defendants under G.L. c. 93, § 24, and need not apply for a license from the Defendants or, (b) in the event that the statutes at G.L. c. 93, §§ 24-28, are held to apply to the Plaintiff, that the statutes are unconstitutional as applied to the Plaintiff because they violate Article XXX of the Massachusetts Constitution's Declaration of Rights;
2. Enter judgment in Plaintiff's favor, and against the Defendants, on plaintiff's claim pursuant to 42 U.S.C. § 1983 and G.L. c. 12, § 11I;
3. Temporarily, preliminarily, and permanently enjoin the Defendants from enforcing G.L. c. 93, §§ 24-28 and 209 CMR 18.00 *et seq.* against the Plaintiff;
4. Award Plaintiff damages in an amount to be determined at trial;
5. Award Plaintiff its costs and attorneys' fees pursuant to 42 U.S.C. §§ 1983, 1988 and G.L. c. 12, § 11I; and
6. Award such other relief as the Court deems just and proper.

The Plaintiff,

LUSTIG, GLASER & WILSON, P.C.,
By its attorneys,

Mark D. Smith, BBO# 542676
Marc C. Laredo, BBO# 543973
Matthew A. Kane, BBO# 666981
101 Federal Street, Suite 650
Boston, MA 02110
617-443-1100
smith@laredosmith.com
laredo@laredosmith.com
kane@laredosmith.com

Date:

## VERIFICATION

I, Kenneth C. Wilson, state that I have read the foregoing allegations and that the facts recited therein are true and correct based upon my personal knowledge and review of the exhibits attached hereto.

Signed under the penalties of perjury this 21st day of January, 2016.

Kenneth C. Wilson

## CERTIFICATE OF SERVICE

I, Mark D. Smith, hereby certify that a true copy of the foregoing document was served by delivering a copy by first class mail, postage prepaid to Assistant Attorney General Suleyken D. Walker, Government Bureau, One Ashburton Place, 20th Floor, Boston, MA 02108.

1-22-16

Date:

Mark D. Smith

# Exhibit A

# The Commonwealth of Massachusetts

*Office of the Commissioner of Banks*
*One South Station*
*Boston, Massachusetts 02110*

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

JANICE S. TATARKA
DIRECTOR
OFFICE OF CONSUMER AFFAIRS AND
BUSINESS REGULATION


October 13, 2006

The Division is issuing the following opinion pertaining to attorneys at law ("attorneys") engaged in the collection of consumer debt in the Commonwealth and the applicability of the Commonwealth's debt collection laws, General Laws chapter 93, sections 24-28, inclusive and the Division's regulations, 209 CMR 18.00 *et seq* (collectively the "Debt Collection Law").

The Debt Collection Law defines a "debt collector" in section 24 of chapter 93 as "any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another." Within the same definitional provision is a list of exclusions from the "debt collector" definition including in clause (g) "attorneys-at-law collecting a debt on behalf of a client". The Division has been requested to opine on the scope of this attorney-at-law exclusion and applicability of the Debt Collection Law to attorneys.

Historically, the Debt Collection Law, prior to its most recent amendment, did not apply to attorneys licensed to practice law in the Commonwealth. However, the Debt Collection Law, including its licensing provisions, was applicable to attorneys licensed to practice in other jurisdictions. The Debt Collection Law was amended in many provisions to model the federal statute, the Fair Debt Collection Practices Act ("FDCPA") which does not contain a licensing component. The most recent amendments to General Laws chapter 93, sections 24-28, inclusive, were based on a legislative recommendation submitted by the Division. That recommendation was passed into law without any substantive change.

The Division is mindful of the 1995 U. S. Supreme Court decision which held that attorneys who regularly engage in consumer debt collection activity, even when that activity consists of litigation are "debt collectors" under the FDCPA and subject to compliance with its requirements and restrictions. *See* Heintz v. Jenkins, 514 U.S. 291 (1995).

It is the position of the Division that the "attorney-at-law" exclusion applies solely to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth. Attorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers. This position is consistent with the Division's longstanding practice relative to the licensing of attorneys as debt collectors. Attorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the FDCPA and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq*. The Debt Collection Law contains substantially similar requirements and restrictions as the FDCPA.

In a separate opinion (Opinion O06060), also issued today, the Division established that a "passive" debt buyer need not obtain a debt collector license if the collections were done by a licensed debt collector or an attorney licensed to practice law in Massachusetts. However, it is the Division's position that Opinion O06060 can not be coupled with the attorney- at- law on behalf of a client exclusion, so called, to result in situations where an entity is not required to be licensed. Two such situations are addressed as follows.

In the first situation, if an attorney licensed to practice law in Massachusetts is, in fact, the "debt buyer" as contemplated by the Division's Industry Letter of June 16, 2006 (the "Industry Letter"), the attorney or a law firm would be required to obtain a license as a debt collector in accordance with the requirement of the Industry Letter. Accordingly, the attorney-at-law exclusion would not be available to an attorney who or a law firm which is a debt buyer. It is the Division's position that under those facts the debt buyer/attorney would neither be passive nor acting on behalf of a client.

Similarly, in the event that an attorney licensed to practice law in Massachusetts is a debt buyer as contemplated by the Division's Industry Letter and Opinion O06060 and that attorney seeks to collect the debt solely through a law firm that attorney is affiliated with, that attorney would no longer be viewed as a "passive debt buyer" and that attorney would be required to obtain a debt collector license.

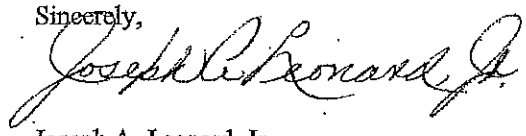
Attorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt collection, must obtain a license as a debt collector and will be subject to all provisions of the Debt Collection Law in the Commonwealth. In that situation such an attorney, not authorized to practice in the Commonwealth, collecting debt would be conducting such business as a debt collector and not as an attorney. That fact was clearly recognized in the prior statute. The Division's view under the amended statute remains the same.

This opinion is effective as of October 2, 2006.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

The Division will review other fact patterns on a case by case basis. An entity seeking an opinion from the Division on the Debt Collection Law should review the process for obtaining an opinion as set out in Regulatory Bulletin 1.1-103. Opinion requests must contain all applicable facts and cite specific cases, if any, which support the argument presented. Additionally, rulings of the Federal Trade Commission, if applicable, should be cited as well.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

O06059

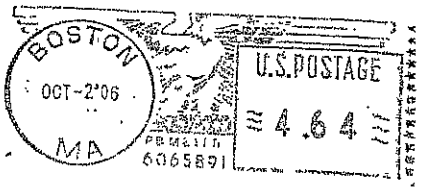
P:\Legal\2006\O06059

# Exhibit B

CERTIFIED MAIL™

Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

7006 0100 0005 0893 3703




Lustig, Glaser & Wilson PC
PO Box 9127
Needham, MA 02492

02492+9127 8099

# The Commonwealth of Massachusetts

*Office of the Commissioner of Banks*
*One South Station*
*Boston, Massachusetts 02110*

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

JANICE S. TATARKA
DIRECTOR
OFFICE OF CONSUMER AFFAIRS AND
BUSINESS REGULATION


October 2, 2006

Lustig, Glaser & Wilson PC
PO Box 9127
Needham, MA 02492

To The Chief Executive Officer:

On June 16, 2006 the Division of Banks ("Division") issued an Industry Letter (the "Letter") stating that debt buyers as referred to in the Letter are required to be licensed by the Division. The Division subsequently posted notice that all covered debt buyers had until September 30, 2006 to submit an application for a debt collector license to the Division. The Letter is available on the Division's website at www.mass.gov/dob.

The records of the Division show that as of the date of this letter you are not licensed to do business as a debt collector in Massachusetts nor have you filed an application by the September 30th deadline. Any collection of debt without a license is a violation of Massachusetts General Law chapter 93, sections 24 through 28 inclusive (the "Statutes) and Massachusetts Regulation 209 CMR 18.00 et seq. (the "Regulations") under which you may be subject to the penalties set out in statute. Further, violations of G.L.c. 93, §§ 24 through 27 are considered unfair or deceptive acts or practices under the provisions of G.L.c. 93A. For violations of G.L.c. 93A you may be subject to action by the Attorney General of the Commonwealth and by consumers, who are provided by the statute with certain rights to seek damages against you.

**You are hereby directed to immediately cease engaging in any unlicensed or unauthorized debt collection activity in Massachusetts until such time as you have either: (1) obtained a license through the Division's normal application process; or (2) demonstrated in writing why you are not subject to the Statutes and Regulations to the satisfaction of the Division.**

Enclosed is an affidavit which must be completed by an authorized officer and returned to Deborah Doyle, Chief Director, Consumer Compliance Unit of the Division unless a letter demonstrating why you are not subject to the Statutes and Regulations has been submitted. The affidavit or a letter must be submitted within two weeks of the receipt of this letter.

Sincerely,

Steven L. Antonakes
Commissioner of Banks

Enclosures
**CERTIFIED MAIL #7006 0100 0005 0893 3703**

COMMONWEALTH OF MASSACHUSETTS

**AFFIDAVIT**

I, _____, a duly authorized officer of _____ hereby certify that I, and/or any entity that I do business as, have ceased operating as a debt collector as defined by Massachusetts General Laws chapter 93, section 24. I, and/or any such business entity discontinued operations as of _____, 200___. I hereby further certify that neither I, nor any business entity owned, operated, or controlled by me, will begin operation as a debt collector, as defined by Massachusetts General Laws chapter 93 section 24, without first obtaining a license from the Commissioner of Banks of the Commonwealth of Massachusetts, as required by Massachusetts General Laws chapter 93 section 24A.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS _____ DAY OF _____, 200___.

By: _____
(Signature)

NOTARIZATION

State of _____ County of _____

Personally appeared the above-named _____ on _____
(date)

and made oath that the statements herein made are true.

Before me

_____
(Notary Public)

SEAL

# Exhibit C

# Facsimile Cover Sheet

DATE: October 3, 2006

FROM: Kenneth C. Wilson, Esq.

To: Deborah Doyle

Company: Division of Banks

FAX NO.: 617-956-1599

RE: Response to Letter Dated 10/2/06 from Steven L. Antonakes, Commissioner of Banks addressed to Lustig, Glaser & Wilson, P.C.



We are sending a total of 17 pages, including this cover sheet.

**Lustig, Glaser & Wilson, P.C., PO Box 9127, Needham, MA 02492-9127**
**Telephone: (781) 449-3000** **Facsimile: (781) 449-6600**

LUSTIG, GLASER & WILSON, P.C. *Attorneys at Law*
P.O. Box 929127, Needham, Massachusetts 02492 • Tel (781) 449-3000 • Fax (781) 449-6600

October 3, 2006

Deborah Doyle, Chief Director
Consumer Compliance Unit
Commissioner of Banks
One South Station
Boston, MA 02110

RE: Letter Dated October 2, 2006 – Lustig, Glaser & Wilson, P.C.

Dear Ms. Doyle:

I am writing in response to the certified letter numbered 7006 0100 0005 0893 3703, dated October 2, 2006 from Steven L. Antonakes, Commissioner of Banks, directing that Lustig, Glaser & Wilson, P.C.:

**"immediately cease engaging in unlicensed or unauthorized debt collection activity in Massachusetts until such time as you have either (1) obtained a license through the Division's normal application process; or (2) demonstrated in writing why you are not subject to the Statutes and Regulations to the satisfaction of the Division."**

Please be advised that Lustig, Glaser & Wilson, P.C. is **not** a debt purchaser. Never, since its incorporation in 1992, has Lustig, Glaser & Wilson, P.C. **ever** engaged in the business of debt purchasing as defined by the applicable Statutes and Regulations.

Additionally, Lustig, Glaser & Wilson, P.C. is a law firm and as such is subject to the regulation of the Supreme Judicial Court, NOT the Division of Banks. For your review I have enclosed copies of our Articles of Organization, a current print screen of the information relating to Lustig, Glaser & Wilson, P.C. from the Secretary of the Commonwealth's website, a copy of the Board of Bar Overseer's information from the Board's website showing that the two shareholders of Lustig, Glaser & Wilson, P.C. (Ronald E. Lustig – 50% and Kenneth C. Wilson – 50%) are both attorneys in good standing, admitted to the practice of law in the Commonwealth.

Finally, I direct your attention to the Division's own Regulations, specifically 209 CMR 18.02, which provides an exemption for "attorneys-at-law collecting a debt on behalf of a client" from the definition of "Debt Collector" as used in said Regulation.

Following your review of the enclosed materials would you be so kind as to provide me with your decision, in writing, regarding our claim of exemption from (or the non-applicability of) the Statutes and Regulations referred to in Commissioner

Antonakes' letter dated October 2, 2006. In the event additional information is required for you to complete your review, kindly contact me immediately at (781) 449-3000 ext. 102 or by e-mail at kcwilson@lgw.com.

Very truly yours,

Kenneth C. Wilson
President and Managing Attorney

aminer

lame
pproved

# The Commonwealth of Massachusetts

OFFICE OF THE MASSACHUSETTS SECRETARY OF STATE
MICHAEL JOSEPH CONNOLLY, Secretary
ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS 02108

## ARTICLES OF ORGANIZATION-PROFESSIONAL CORPORATION
(Under G.L. Ch. 156A)

### ARTICLE I

The name of the corporation is: (see Section 8)

Lustig, Glaser & Wilson, P.C.

### ARTICLE II

The purpose for which the corporation is formed and the specific type(s) of professional service to be rendered by the corporation are as follows: (see Sections 2(b) and 3)

To engage in the general practice of law and to render any and all services incidental or ancillary to any aspect of such services including, without limitation, the following: consulting and rendering legal advice or opinions on or with respect to any cause or matter whatsoever, including laws, statutes, rules, regulations, contracts, legal principles and other documents, actions or relationships having legal effect or significance; drafting documents and opinic for the purpose of implementing such advice, representation and arrangements; preparing and managing the prosecution or defense of causes in courts or before regulatory agencies or other tribunals and representation of clients in and before such courts of law and equity, regulatory agencies or other tribunals; and to examine and report generally with respect to the public record as maintained by the Courts of the Commonwealth or other jurisdictions, Registries of Deeds and act on behalf of the public who may engage the Corporation for such purposes.

The Corporation shall have and enjoy all the powers and privileges permitted of or extended to business corporations organized under G.L. Chapter 156B, except as may be inconsistent with the provisions of G.L. Chapter 156A, and may own, lease, manage, let, sell, hold, mortgage, convey or otherwise dispose of real and personal property necessary or appropriate for the rendering of professional legal services to the public, and may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment with power to pledge, mortgage and convey the same as may be necessary or convenient.

The Corporation shall have the power and authority to do, take or cause to be taken any and all acts and things necessary or incidental to the foregoing purposes subject to and consistent with the provisions of G.L. Chapter 156A, and shall have authority to open and maintain bank accounts, including IOLTA accounts, so-called, for the management and disbursement of clients' funds.

92-155040

C ☐
P ☑
M ☐
R.A. ☐

NOTE: If the space provided under any article or item on this form is insufficient, additions shall be set forth on a separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring such addition is clearly indicated.

All references to Sections are to Sections of Mass. G.L. Chapter 156A.

...types, classes or stock and the total number of shares and par value, if any, of each type and class of stock which the follows:

WITHOUT PAR VALUE STOCKS

| TYPE | NUMBER OF SHARES |
|---|---|
| COMMON: | 15,000 |
| PREFERRED: | None |

WITH PAR VALUE

| TYPE | NUMBE |
|---|---|
| COMMON: | Non |
| PREFERRED: | Non |

## ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or class and of each other class of which shares are outstanding and of each series then established with any class.

## ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are as follo

All shares issued by the Corporation shall be subject to the restrictions which are set forth in G.L. Chapter 156A governing Profes and to the Rules of the Supreme Judicial Court which may govern issuan eligibility for ownership of shares in the Corporation. In no event Corporation be issued or transferred to any person other than the Corp person who is duly licensed by the Supreme Judicial Court to practice l Commonwealth of Massachusetts and who remains in good standing before

All shareholders of the Corporation shall, by becoming shareho to and be subject to the provisions of S.J.C. Rule 3:06 (or as the same to time be amended or succeeded by the Supreme Judicial Court).

Any sale of shares of stock in the Corporation to any person o is not already a stockholder in the Corporation must be approved in adv or written consent of the holders of not less than 55 percent of the out shares of stock issued by the Corporation. [G.L. Chapter 156A, Sec. 10(

Certificates issued representing shares of the Corporation shal are subject to restrictions on transfer imposed by G.L. Chapter 156A as applicable Rules of the Supreme Judicial Court and otherwise as set forth Articles of Organization, as the same may from time to time be amended.

See "Attachment 5A" annexed and incorporated he

## ARTICLE VI

Other lawful provisions, if any, for the conduct and regulation of business and affairs of the corporation, for its voluntary dissolution regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders: (If there are no pro

See "Attachment 6A" annexed and incorporated he

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amen

# COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the eighteenth day of December A. D. 19 75 , said Court being the highest Court of Record in said Commonwealth:

RONALD E. LUSTIG

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.

RICHARD J. ROUSE, Clerk

*Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

X3116

# COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the twenty-eighth day of November A. D. 19 69 , said Court being the highest Court of Record in said Commonwealth:

DAVID M. GLASER

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.

RICHARD J. ROUSE, Clerk

* Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

X3116

# COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the twenty-first day of December A. D. 19 81, said Court being the highest Court of Record in said Commonwealth:

KENNETH C. WILSON

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.

RICHARD J. ROUSE, Clerk

*Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

X3116

ATTACHMENT 5A

In case a stockholder desires to sell his shares of stock
first offer them for sale to the remaining stockholders, i
the intention to give them a preference in the purchase o
shares, and any attempted sale in violation of this pro
shall be null and void.

*****

ATTACHMENT 6A

6. Other lawful provisions, if any, for the conduct
regulation of the business and affairs of the Corporation for
voluntary dissolution, or for limiting, defining, regulating
powers of the corporation, or of its director stockholders, or
any class of stockholders:

(a) The directors may make, amend, or repeal these Articl
or the by-laws in whole or in part, except with respect to ar
provision of such by-laws which by law or these Articles or th
by-laws requires action by the stockholders.

(b) Meetings of the stockholders of the corporation shall be
held anywhere in the United States.

(c) The corporation shall have the power to be a partner in
any business enterprise which this corporation would have the
power to conduct by itself.

(d) The corporation, by vote of at least 51 percent of the
shares outstanding and entitled to vote thereon (or if there are
two or more classes of stock entitled to vote as separate classes,
then by vote of not less than 51 percent of each such class of
stock outstanding), may, subject to (and to the extent not
inconsistent with) the provisions of G.L. Chapter 156A, (i)
authorize any amendment to its Articles of Organization pursuant
to Section 71 of Chapter 156B of the Massachusetts General Laws,
as amended from time to time, (ii) authorize the sale, lease or
exchange of all or substantially all of its property and assets,
including its goodwill, pursuant to Section 75 of Chapter 156B of
the Massachusetts General Laws, as amended from time to time and
(iii) approve an agreement of merger or consolidation pursuant to
Section 78 of Chapter 156B of the Massachusetts General laws, as
amended from time to time.

## ARTICLE VII

The information contained in ARTICLE VII is NOT a PERMANENT part of the Articles of Organization and may be changed ONLY by filing the appropriate form provided therefor.

a. The post office address of the corporation IN MASSACHUSETTS is: 175 Highland Avenue, Needham, MA 02194

b. The name and residential address of each of the initial directors, shareholders and officers of the corporation are as follows: (see Section 7(b)

| | NAME | RESIDENCE |
|---|---|---|
| President: | Kenneth C. Wilson | 34 Bradford Road, Natick, MA 01760 |
| Treasurer: | Ronald E. Lustig | 6 Brigham Court, Natick, MA 01760 |
| Clerk: | Ronald E. Lustig | 6 Brigham Court, Natick, MA 01760 |
| Directors: | Ronald E. Lustig | 6 Brigham Court, Natick, MA 01760 |
| | Kenneth C. Wilson | 34 Bradford Road, Natick, MA 01760 |
| Shareholders: | Ronald E. Lustig | 6 Brigham Court, Natick, MA 01760 |
| | David M. Glaser | 618 Newton Street, Chestnut Hill, MA 02167 |
| | Kenneth C. Wilson | 34 Bradford Road, Natick, MA 01760 |

c. The fiscal year of the corporation shall end on the last day of the month of: December

d. The name and BUSINESS address of the RESIDENT AGENT of the corporation, if any, is: None appointed

PLEASE INSERT HERE the required certificate(s) from the appropriate regulatory board(s) Section 7(b)

## ARTICLE VIII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

LATER EFFECTIVE DATE:

## ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF and under the pains and penalties of perjury, I/WE, whose signature(s) appear below as incorporator(s) and whose names and business or residential address(es) ARE CLEARLY TYPED OR PRINTED beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 29th day of February 1992

Ronald E. Lustig

Ronald E. Lustig
6 Brigham Court, Natick, MA

NOTE: If an already-existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

SECRETARY OF COMMONWEALTH

1992 JUN -3 AM 9:53

DRAFTING DIVISION

396659

THE COMMONWEALTH OF MASSACHUSETTS

PROFESSIONAL ORGANIZATION

ARTICLES OF ORGANIZATION

GENERAL LAWS, CHAPTER 156A, SECTION 7

---

I hereby certify that, upon an examination of these articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of $ 200.— having been paid, said articles are deemed to have been filed with me this 3RD day of JUNE 19 92

*Effective date*

Michael Joseph Connolly

MICHAEL JOSEPH CONNOLLY
*Secretary of State*

**FILING FEE:** 1/10 of 1% of the total amount of the authorized capital stock, but not less than $200.00. For the purpose of filing, shares of stock with a par value less than one dollar or no par stock shall be deemed to have a par value of one dollar per share.

**PHOTOCOPY OF ARTICLES OF ORGANIZATION TO BE SENT**

RONALD E. LUSTIG

LUSTIG, GLASER & WILSON
175 HIGHLAND AVENUE
NEEDHAM HEIGHTS, MA 02194

Telephone: (617) 455-6666

# The Commonwealth of Massachusetts
# William Francis Galvin

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512
Telephone: (617) 727-9640

*LUSTIG, GLASER & WILSON, P.C. Summary Screen*

Help with this form

Request a Certificate

**The exact name of the Professional Corporation:** LUSTIG, GLASER & WILSON, P.C.

**Entity Type:** Professional Corporation

**Identification Number:** 043155826

**Old Federal Employer Identification Number (Old FEIN):** 000396659

**Date of Organization in Massachusetts:** 06/03/1992

**Current Fiscal Month / Day:** 12 / 31 **Previous Fiscal Month / Day:** 01 / 01

**The location of its principal office in Massachusetts:**
No. and Street: 140 KENDRICK STREET
BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

**If the business entity is organized wholly to do business outside Massachusetts, the location of that office:**
No. and Street:
City or Town: State: Zip: Country:

**The name and address of the Registered Agent:**
Name: RONALD E. LUSTIG
No. and Street: C/O LUSTIG, GLASER & WILSON, P.C.
140 KENDRICK STREET, BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

**The officers and all of the directors of the corporation:**

| Title | Individual Name<br>First, Middle, Last, Suffix | Address (no PO Box)<br>Address, City or Town, State, Zip Code | Expiration of Term |
|---|---|---|---|
| PRESIDENT | KENNETH C. WILSON | 274 PARKER STREET<br>NEWTON, MA 02459 USA | 06/30/2004 |
| TREASURER | RONALD E. LUSTIG | 6 BRIGHAM COURT | 06/30/2004 |

| | | | |
|---|---|---|---|
| | | NATICK, MA 01760 USA | |
| SECRETARY | RONALD E. LUSTIG | 6 BRIGHAM COURT<br>NATICK, MA 01760 USA | 06/30/2004 |
| DIRECTOR | RONALD E. LUSTIG | 6 BRIGHAM COURT<br>NATICK, MA 01760 USA | 02/02/2004 |
| DIRECTOR | KENNETH C. WILSON | 274 PARKER STREET<br>NEWTON, MA 02459 USA | 02/02/2004 |

**business entity stock is publicly traded:** __

**The total number of shares and par value, if any, of each class of stock which the business entity is authorized to issue:**

| Class of Stock | Par Value Per Share Enter 0 if no Par | Total Authorized by Articles of Organization or Amendments | | Total Issued and Outstanding |
|---|---|---|---|---|
| | | *Num of Shares* | *Total Par Value* | *Num of Shares* |
| CNP | $0.00000 | 15,000 | $0.00 | 1,000 |

__ Consent __ Manufacturer __ Confidential Data __ Does Not Require Annual Report

X Partnership X Resident Agent X For Profit __ Merger Allowed

**Select a type of filing from below to view this business entity filings:**

ALL FILINGS
Annual Report - Professional
Application For Revival
Articles of Amendment
Articles of Consolidation - Foreign and Domestic

View Filings | New Search

**Comments**



Help

MA SOC Filing Number: 200631587590 Date: 01/23/2006 10:49 AM

# The Commonwealth of Massachusetts
## William Francis Galvin

Minimum Fee: $100.00

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512
Telephone: (617) 727-9640

## Annual Report - Professional
(General Laws, Chapter 156D)

**Federal Employer Identification Number:** 043155826 *(must be 9 digits)*

**1. The exact name of the business entity is:** LUSTIG, GLASER & WILSON, P.C.

**2. The Corporation is organized under the laws of:** State: MA Country:

**3,4. The street address of the corporation registered office in the commonwealth and the name of the registered agent at that office:**

Name: RONALD E. LUSTIG
No. and Street: C/O LUSTIG, GLASER & WILSON, P.C.
140 KENDRICK STREET, BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

**5. The street address of the corporation's principal office is:**

No. and Street: 140 KENDRICK STREET
BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

**6. Provide the name and business street address of the officers and of all the directors of the corporation:**
*(A president, treasurer, secretary and at least one director are required.)*

| Title | Individual Name<br>First, Middle, Last, Suffix | Address (no PO Box)<br>Address, City or Town, State, Zip Code |
|---|---|---|
| PRESIDENT | KENNETH C. WILSON | 274 PARKER STREET<br>NEWTON, MA 02459 USA |
| TREASURER | RONALD E. LUSTIG | 6 BRIGHAM COURT<br>NATICK, MA 01760 USA |
| SECRETARY | RONALD E. LUSTIG | 6 BRIGHAM COURT<br>NATICK, MA 01760 USA |
| DIRECTOR | KENNETH C. WILSON | 274 PARKER STREET<br>NEWTON, MA 02459 USA |
| DIRECTOR | RONALD E. LUSTIG | 6 BRIGHAM COURT<br>NATICK, MA 01760 USA |

**7. Briefly describe the professional services rendered by the corporation:**

PRACTICE OF LAW - ATTORNEYS

**8. The capital stock of each class and series is:**

0-3629-0

| Class of Stock | Par Value Per Share Enter 0 if no Par | Total Authorized by Articles of Organization or Amendments | | Total Issued and Outstanding |
|---|---|---|---|---|
| | | *Num of Shares* | *Total Par Value* | *Num of Shares* |
| CNP | $0.00000 | 15,000 | $0.00 | 1,000 |

**9. Check here if the stock of corporation is publicly traded:** ___

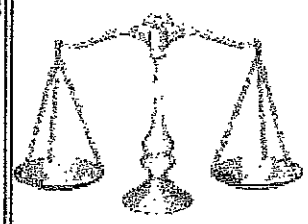
**10. Date of the end of the fiscal year is:** 12/31/2005

**11. The names and residential addresses of all *shareholders*, whether individuals, partners, or Business Entities are:**

| Name | Address (no PO Box) Address, City or Town, State, Zip Code |
|---|---|
| RONALD E. LUSTIG | 6 BRIGHAM COURT NATICK, MA 01760 USA |
| KENNETH C. WILSON | 274 PARKER STREET NEWTON, MA 02459 USA |

**I, RONALD E. LUSTIG, its OTHER OFFICER**

**the undersigned, hereby certify, pursuant to Massachusetts General Laws, Chapter 156A, Section 18, that the above-listed shareholders, and all the partners of a general partnership which is a shareholder of the business entity, are duly licensed to render one or more professional services for which the business entity was organized, or are professional business entities authorized to render such professional services, and that a copy of this report is being sent to the appropriate regulatory board. I hereto sign my name on this 23 Day of January, 2006.**

| **Massachusetts Board of Bar Overseers**<br><br>**of the Supreme Judicial Court**<br>99 High Street<br>Boston, Ma. 02110<br>**Attorney Status Report** |  |
|---|---|
| Kenneth C Wilson<br>Lustig, Glaser & Wilson, P.C.<br>781-449-3000<br>P.O. Box 9127<br><br>Needham MA 02492-9127<br><br>Admitted to the bar on 1981-12-21<br>Current status is Active<br><br>Next Registration : June | Full office addresses for active status attorneys only. |
| This attorney has no record of public discipline. | Data as of 2006-10-03 |

**Click HERE to SEARCH AGAIN!**

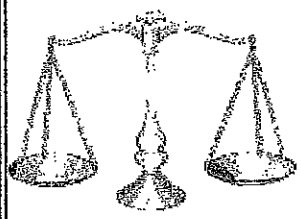
**or HERE to return to the main page.**

# Massachusetts Board of Bar Overseers

## of the Supreme Judicial Court

99 High Street
Boston, Ma. 02110

## Attorney Status Report



Ronald E Lustig
Lustig, Glaser & Wilson, P.C.
781-449-3000
PO Box 9127

Needham MA 02492-9127

Admitted to the bar on 1975-12-18
Current status is Active

Next Registration : December

Full office addresses for active status attorneys only.

This attorney has no record of public discipline.

Data as of 2006-10-03

**Click HERE to SEARCH AGAIN!**

**or HERE to return to the main page.**

From: Origin ID: (781)449-3000
Ronald Lustig
LUSTIG, GLASER & WILSON, P.C
140 Kendrick St
Building C - 3rd Floor
Needham, MA 02494

FedEx Express

CL.5291006/16.23

Ship Date: 03OCT06
ActWgt: 1 LB
System#: 5690242/INET2500
Account#: S *********

COPY

REF:

Delivery Address Bar Code

SHIP TO: (617)956-1500 BILL SENDER

**Deborah Doyle**
**Division of Banks**
**Consumer Compliance Unit**
**One South Station**
**Boston, MA 02110**

**STANDARD OVERNIGHT**

**WED**
Deliver By:
04OCT06

TRK# 7900 8475 5267

FORM 0201

**BOS** A1

02110 -MA-US

**01 LWMA**

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3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.**

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| **Tracking number** | 790084755267 | **Destination** | Boston, MA |
| **Signed for by** | R.POLLEYS | **Delivered to** | Receptionist/Front Desk |
| **Ship date** | Oct 3, 2006 | **Service type** | Standard Envelope |
| **Delivery date** | Oct 4, 2006 9:27 AM | **Weight** | 0.5 lbs. |
| **Status** | Delivered | | |

| Date/Time | | Activity | Location | Details |
|---|---|---|---|---|
| **Oct 4, 2006** | 9:27 AM | **Delivered** | Boston, MA | |
| | 8:14 AM | On FedEx vehicle for delivery | SOUTH BOSTON, MA | |
| | 8:12 AM | At dest sort facility | EAST BOSTON, MA | |
| **Oct 3, 2006** | 11:43 PM | At local FedEx facility | EAST BOSTON, MA | |
| | 9:04 PM | At dest sort facility | EAST BOSTON, MA | |
| | 8:33 PM | Left origin | NEEDHAM, MA | |
| | 7:21 PM | Picked up | NEEDHAM, MA | |
| | 1:46 PM | Package data transmitted to FedEx | | |

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| Email address | Language | Exception updates | Delivery updates |
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| | English | | ☐ |
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| | English | | ☐ |

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**Add personal message:**

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# Exhibit D

LUSTIG, GLASER & WILSON, P.C. *Attorneys at Law*
P.O. Box 549287, Waltham, MA 02454-9826 • Tel (781) 449-3000 • Fax (781) 449-6600

September, 19, 2013

Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118-6400

**RE: Opinion Letter Request – Lustig, Glaser & Wilson, P.C.**

Dear Sir or Madam:

I am writing on behalf of my law firm, Lustig, Glaser & Wilson, P.C. (hereinafter sometimes referred to as "LGW") seeking an opinion from the Division of Banks as to whether or not Lustig, Glaser & Wilson, P.C. is required to obtain a so-called "Debt Collection License" from the Division of Banks in order to engage in consumer debt collection activity in the Commonwealth. While I believe we fall squarely within the exemption for Massachusetts licensed attorneys set forth at 209 CMR 18:02(g) as clarified in the Division's Opinion Letter 06-059 issued on October 13, 2006 we find ourselves constantly challenged on the issue of the need for a license under the so-called "Debt Collection Law" (collectively MGL chapter 93 sections 24-28 and 209 CMR 18.00 et seq). We therefore seek clarification regarding the licensing requirements of the Debt Collection Law as they apply to our law firm so we can be certain as to what is expected of us and correctly respond to future challenges.

By way of background, Lustig, Glaser & Wilson, P.C. is a law firm, incorporated on June 3, 1992 as a professional corporation, pursuant to the laws of the Commonwealth of Massachusetts (see screenshot included herewith showing LGW's corporate information as it appears on the public website of the Corporations Division of the Secretary of the Commonwealth). LGW maintains a single office located at 245 Winter Street, Waltham, Massachusetts where it employs approximately 100 employees, including 22 attorneys. All attorneys employed by LGW are licensed to practice law in Massachusetts and are in good standing with the bar.

Lustig, Glaser & Wilson, P.C.'s law practice is overwhelmingly concentrated in the area of consumer debt collection. All such work is undertaken on behalf of firm clients. As a result, LGW falls within the definition of a "debt collector" as such term is defined by both the Fair Debt Collection Practices Act (15 USC s. 1692(a)(6)) and the Debt Collection Regulations of the Office of the Massachusetts Attorney General (940 CMR 7.03).

Lustig, Glaser & Wilson, P.C. represents original creditors, collection agencies and both active and passive debt purchasers. Neither LGW nor any of the attorneys or other employees employed by LGW has an ownership interest in any of the consumer debt the firm seeks to collect.

When engaging in debt collection activity Lustig, Glaser & Wilson, P.C. communicates with consumers and/or their attorneys as the attorney for the owner of the defaulted debt. The firm's

collection activities consist of telephone calls to consumers, written communication directed to consumers and, when authorized by the owner of the debt, litigation in the Massachusetts trial court system. When litigation is filed it is always filed in the name of the true owner of the debt. In such actions LGW always identifies itself as the attorney for the owner of the debt and not as the plaintiff and/or the owner of the debt.

Based on the information contained herein, which fully and accurately discloses Lustig, Glaser & Wilson, P.C.'s debt collection activities, would you kindly provide us with the Division's opinion as to whether or not Lustig, Glaser & Wilson, P.C. is required by the Debt Collection Law to obtain a license from and post a bond with the Division of Banks in order to continue collecting consumer debt on behalf of firm clients in the Commonwealth.

Kindly let me know if any additional information or documentation is required for your consideration. We look forward to your response.

Very truly yours,

Kenneth C. Wilson – Managing Attorney / President
Lustig, Glaser & Wilson, P.C.
781-514-1526 (Direct)
kcwilson@lgw.com

# Exhibit E

**From:** Ken Wilson <kcwilson@lgw.com>
**Sent:** Monday, October 21, 2013 9:49 AM
**To:** neil.tobin@state.ma.us
**Subject:** Opinion Letter Request - Lustig, Glaser & Wilson, P.C.

Dear Attorney Tobin,

As requested during our discussion of earlier today, I am writing to provide you with some additional information regarding Lustig, Glaser & Wilson, P.C., its consumer debt collection activities and, more specifically, the functions of its non-attorney staff.

As a preliminary matter it is important to understand that all activity of the firm's non-attorney employees is undertaken under the direction and supervision of the firm's attorneys. Lustig, Glaser & Wilson, P.C. operates out of a single location and functions as a true law firm, not as a collection agency. We do not have a collection unit that is independent from the law firm or that acts as a "feeder" for the law firm. Accounts are placed by the firm's various clients with the firm (not with individual attorneys within the firm) and, at the time of placement, are approved for litigation by the firm's clients.

In performing collection litigation services for our clients, both attorney and non-attorney employees of the firm make and receive telephone calls to and from consumers. Calls made or received by non-attorney staff are done so at the direction and under the supervision of the firm's attorneys. Further, calls initiated or received by non-attorney staff members are frequently escalated to the firm's attorneys as necessary.

The firm also sends letters to consumers when providing its collection litigation services to its clients. Letters to consumers are sent pre-suit, post-suit and post-judgment. All letters used were created by firm attorneys and the logic / workflow used by the firm's software and procedures to send written communication to consumers was designed by the firm's managing attorney. Non-attorney employees cannot create or initiate the sending of written communication to consumers.

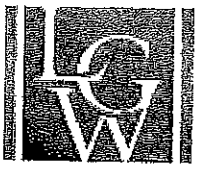
Written communication is frequently received by the firm from consumers. While non-attorney employees frequently review written communication received by the firm, (i.e. do the initial intake and recording of the communication received in the consumer's account history) such written communication is forwarded to one of the firm's attorneys for review and response. Non-attorney staff does not initiate written communication with consumers. Written communication to consumers is handled by one of the firm's attorney staff.

A significant number of the firm's non-attorney staff is devoted to directly supporting the firm's litigation efforts. Such non-attorney employee roles include litigation document review and preparation, interaction with personnel at the various state courts, the county deputy sheriffs and town constables, and other similar functions supporting the firm's consumer debt collection litigation efforts. As is the case with all firm employees, our non-attorney litigation support staff functions at the direction and under the supervision of the firm's attorneys.

While the attorney exemption articulated in the Division's 2006 Opinion Letter clearly applies to attorneys licensed in Massachusetts, we believe the exemption also applies to a law firm such as Lustig, Glaser & Wilson, P.C. since, as a practical matter, the law firm is the legal entity through with the exempt attorneys operate. Lustig, Glaser & Wilson, P.C. is a true debt collection law firm and not a collection agency or a debt purchaser. Finally, as you know, Massachusetts attorneys and the firm's in which they operate are subject to the supervision of the Commonwealth's Supreme Judicial Court and those of us who engage in consumer debt collection must also abide by the debt collection regulations promulgated by the Massachusetts Attorney General.

Please let me know if any additional information is needed.

Kenneth C. Wilson – Managing Attorney



Kenneth C. Wilson
Managing Attorney | Lustig, Glaser & Wilson, P.C.
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245 Winter Street | Suite 300 | Waltham, MA 02451

# Exhibit F

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOHN C. CHAPMAN
UNDERSECRETARY

DAVID J. COTNEY
COMMISSIONER OF BANKS

November 2, 2015

Kenneth C. Wilson
Managing Attorney/President
Lustig, Glaser & Wilson, P.C.
P.O. Box 549287
Waltham, MA 02454-9826

Dear Mr. Wilson:

This letter is in response to your correspondence dated September 19, 2013 and October 21, 2013 to the Division of Banks (Division) in which you request an opinion relative to whether the law firm of Lustig, Glaser and Wilson, P.C. (LGW) is required to obtain a debt collector license from the Division in order to engage in consumer debt collection activity in the Commonwealth. This matter has also been discussed with you in a telephone conference with staff of the Division. I regret the delay in this response.

In your letters, you state that LGW's law practice is overwhelmingly concentrated in the area of consumer debt collection on behalf of its clients. It employs approximately 100 employees, including 22 attorneys licensed to practice law in Massachusetts. All of LGW's attorneys are in good standing with the Massachusetts bar. In performing debt collection services, both attorney and non-attorney employees make and receive telephone calls to and from consumers for the purpose of attempting to collect debts owed to LGW's clients. Telephone calls made by non-attorney staff are described as being conducted at the direction of, and under the supervision of, the firm's attorneys. Calls initiated or received by non-attorney staff may be escalated to LGW's attorneys, as necessary.

All written communication to debtors is created by the firm's attorneys. Non-attorneys cannot create or initiate the sending of written communication to consumers. Written communication received from consumers is forwarded to an LGW attorney for review and response. A significant portion of LGW's non-attorney staff is also dedicated to supporting LGW's litigation efforts. Non-attorney litigation support staff functions at the direction and under the supervision of LGW's attorneys. Based on the facts as presented in your correspondence dated September 19, 2013 and October 21, 2013 relative to the operations of LGW, you ask that the Division confirm that the firm is exempt from being licensed as a debt collector in the Commonwealth.

Massachusetts General Laws chapter 93, section 24A prohibits any person from, directly or indirectly, engaging in the business of a debt collector without first obtaining a license from the Division. Massachusetts General Laws chapter 93, section 24 defines a "debt collector" as, "any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another." However, the statutory definition excludes attorneys-at-law collecting a debt on behalf of a client from the definition of "debt collector."

Under 209 CMR 18.02, the attorney-at-law exemption is applicable to "attorneys-at-law *licensed to practice law in the Commonwealth* who are collecting a debt on behalf of a client." (emphasis added). On October 13, 2006, the Division issued Opinion 06-059 pertaining to the attorney-at-law exclusion and applicability of the debt collection law to attorneys. The 2006 advisory opinion was referenced in your letter dated September 19, 2013. In issuing Opinion 06-059, the Division stated that, "[a]ttorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt collection, must obtain a license as a debt collector and will be subject to the provisions of the Debt Collection Law in the Commonwealth. In that situation such an attorney, not authorized to practice in the Commonwealth, collecting debt would be conducting such business as a debt collector and not as an attorney."[1] Attorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers.

While the Division has considered the application of the attorney-at-law exception to attorneys licensed in other jurisdictions, the Division has not yet considered whether the "attorney-at-law" exception can exempt a law firm which is primarily engaged in consumer debt collection activities and comprised of attorneys licensed to practice in Massachusetts from the debt collector licensing requirements outlined in Massachusetts General Laws chapter 93, section 24A.[1]

After a careful review of the facts you have presented in your correspondence, as well as the provisions of Massachusetts General Laws chapter 93, sections 24-28, inclusive, and the Division's implementing regulation, 209 CMR 18.00 *et seq*, the Division has determined that the attorney-at-law exemption from debt collector licensing requirements provides a narrow exception for Massachusetts licensed attorneys engaged in debt collection activities. The language in the attorney-at-law exemption and the position presented in Opinion 06-059 are illustrative of the limitations upon the attorney-at-law exemption. Specifically, the Division now clarifies that the applicability of the exemption to Massachusetts law firms turns on the extent of the debt collection activity conducted by the firm.

In concluding that the amount of a law firm's debt collection activity dictates whether it is subject to Massachusetts debt collector licensing requirements, the Division first considered that the definition of a debt collector in Massachusetts General Laws chapter 93, section 24 is quite expansive as it encompasses "any person . . . in any business the principal purpose of which is the collection of a debt, or who *regularly collects* or attempts to collect . . . a debt owed or . . . due [to] another." (emphasis added). The term "regular" means "steady, or uniform in course, practice or occurrence; not subject to unexplained or irrational variation." *Black's Law Dictionary* 1285 (6th ed. 1990). Thus, the plain language of the debt collector definition includes, and requires licensure of, those individuals or entities that frequently or consistently engage in debt collection activities, rather than those who collect debts on an occasional or sporadic basis.

[1] The term "law firm" in this opinion includes one or more attorneys, regardless of corporate structure.

Conversely, the language in the "attorney-at-law" exclusion from the debt collector definition in Massachusetts General Laws chapter 93, section 24 is quite limited. Specifically, "attorney-at-law" exclusion applies to "attorneys collecting *a debt* on behalf of a client" rather than attorneys who *regularly* collect debts on behalf of a client. M.G.L. c. 93 § 24(g) (emphasis added). The plain language of the statutory exclusion, therefore, does not exempt attorneys whose principal purpose is the collection of debts or who regularly collect debts on behalf of clients. Accordingly, it is the Division's position that the absence of the broad language such as "regularly collects" in the attorney-at-law exemption indicates that the attorney-at-law exemption does not permit law firms comprised of Massachusetts-licensed attorneys to engage in regular debt collection activities without obtaining a debt collector license. Going forward, the Division will require licensure of law firms where the firm's principal purpose is the collection of debts, or where the firm regularly collects or attempts to collect debts owed or asserted to be owed to another.[2] The Division will reach its determination on a case-by-case basis, taking into consideration various factors, including, but not limited to: (1) the relative portion of the firm practice that involves the collection of debts; (2) whether, and to what extent, the firm utilizes non-attorneys to engage in debt collection activity, and whether such non-attorney work is directly supervised by attorneys; and (3) the extent of the firm's debt collection work that involves collecting debts through traditional legal activities (e.g. filing complaints) compared to its debt collection work through traditionally non-legal activities (e.g. sending letters or calling debtors).

In your correspondence with the Division, you described LGW as a firm overwhelmingly engaged in the area of consumer debt collection on behalf of its clients. Per your representations about the extent of LGW's debt collection activities, the Division concludes that LGW's principal purpose is the collection of debts and therefore its activities are beyond the scope of the attorney-at-law exemption. Therefore, LGW is required to be licensed as a debt collector in the Commonwealth under the provisions of Massachusetts General Laws chapter 93, Section 24, through 28, inclusive, as well as the Division's regulation 209 CMR 18.00 *et seq*.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

O13018

[2] The Division makes clear that the debt collector licensing requirement for law firms comprised of Massachusetts-licensed attorneys, as set forth in this Opinion, is a new requirement that will not be imposed retroactively on affected law firms. Furthermore, the Division recognizes that immediate compliance by affected law firms is not feasible. For this reason, the Division will not enforce the foregoing licensure requirements and will not consider affected law firms to be in violation of the licensing requirements if those firms obtain debt collector licenses within six months of the date of this Opinion.

# Exhibit 2

1/29

F

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR OCURT DEPARTMENT
CIVIL ACTION NO. 1584CV03703-BLS

LUSTIG, GLASER & WILSON, P.C.,

Plaintiff,

v.

DAVID J. COTNEY, in his capacity as the Commissioner of Banks, and
MASSACHUSETTS DIVISION OF BANKS,

Defendants.

**DEFENDANTS' ANSWER TO FIRST VERIFIED AMENDED COMPLAINT**

Defendant David J. Cotney, in his capacity as the Commissioner of Banks, and the Massachusetts Division of Banks ("the defendants") answer the Complaint by corresponding paragraphs, and assert the following defenses:

1. The first sentence of paragraph 1 merely introduces the action and therefore no answer is required. The first clause of the second sentence constitutes legal argument and therefore no answer is required. With respect to the remainder of the second sentence, the state defendants admit that the Division issued the referenced opinion and answer further that the opinion speaks for itself. The third sentence of paragraph 1 constitutes legal argument and therefore no answer is required. The fourth sentence of paragraph 1 merely states the plaintiff's requested relief and no answer is required.

2. Upon information and belief, the state defendants admit the allegations in paragraph 2.

3. Admitted.

4. Admitted.

## III. FACTS

5. To the extent paragraph 5 characterizes and summarizes the meaning of statutes, those statutes speak for themselves and no answer is required. The remainder of the allegations in paragraph 5 constitute legal argument and no answer is required.

6. Paragraph 6 characterizes and summarizes the meaning of regulations, which speak for themselves and no answer is required.

7. The first sentence of paragraph 7 constitutes legal argument, not an allegation of fact, and therefore no answer is required. The second and third sentence of paragraph seven merely summarize and characterize documents, which speak for themselves and no answer is required. The defendants admit the fourth sentence of paragraph 7. The fifth sentence of paragraph seven merely summarizes and characterizes documents, which speaks for themselves and therefore no further answer is required. Upon information and belief, the defendants admit the sixth sentence of paragraph 7.

8. The defendants admit that LGW is a law firm located in the Commonwealth of Massachusetts whose Massachusetts attorneys concentrate their practice in the area of consumer debt collection, but lack sufficient knowledge or information to form a belief as to the truth or falsity of the remainder of the allegations in paragraph 8.

9. With respect to the first sentence of paragraph 9, the defendants admit that Kenneth Wilson wrote to the Division by letter dated September 9, 2013, requesting an opinion. The remainder of the first sentence simply summarizes and characterizes a document, which speaks for itself and no further answer is required. The defendants admit the second sentence of paragraph 9.

10. Admitted.

11. The defendants admit that by letter dated November 2, 2015, the Division informed LGW of its opinion that LGW is a debt collector and therefore requires a license to conduct its debt collection business. With respect to the second sentence of paragraph 11, the first three clauses constitute legal argument and no answer is required. The fourth clause of the second sentence characterizes and summarizes the meaning of documents, which speak for themselves and no answer is required. The fifth clause of the second sentence constitutes legal argument and no answer is required. The third sentence of paragraph 11 characterizes and summarizes the meaning of a document, which speak for itself and no answer is required. The state defendants admit the fourth sentence of paragraph 11.

12. The state defendants admit that their November 2, 2015 letter gives affected law firms six months to register, to post a bond, and to obtain a license from the Division. The remainder of the first sentence of paragraph 12 characterizes and summarizes the meaning of a document, which speaks for itself. Therefore, no answer is required. The defendants admit the second sentence of paragraph 12.

## IV. CAUSES OF ACTION

(Count I - Declaratory Judgment, G.L. c. 231A, § 1)

13. The foregoing Answers to paragraphs 1 through 12 are incorporated herein by reference.

14. The allegations in paragraph 14 state a legal conclusion to which no answer is required.

15. The allegations in paragraph 15 state a legal conclusion to which no answer is required.

16. The allegations in paragraph 16 state legal conclusions and speculation to which no answer is required.

17. Denied.

(Count II – G.L. c. 231, §1 – Separation of Powers)

18. The foregoing Answers to paragraphs 1 through 17 are incorporated herein by reference.

19. The allegations in paragraph 19 state a legal conclusion to which no answer is required.

20. Denied.

21. The allegation in paragraph 21 is merely a quote from Article XXX of the Massachusetts Constitution's Declaration of Rights, which speaks for itself and no answer is required.

22. The allegations in paragraph 22 state a legal conclusion to which no answer is required.

23. The allegations in paragraph 23 state a legal conclusion to which no answer is required.

24. Denied.

25. Denied.

26. Denied.

(Count III: Violation of Civil Rights, 42 U.S.C. § 1983 and G.L. c. 12, § 11I)

27. The foregoing Answers to paragraphs 1 through 26 are incorporated herein by reference.

28. Denied.

29. Denied.

30. The allegations in paragraph 30 state a legal conclusion to which no answer is required.

31. Denied.

(Count IV - Injunctive Relief)

32. The foregoing Answers to paragraphs 1 through 31 are incorporated herein by reference.

33. The allegations in paragraph 33 state legal conclusions to which no answer is required.

34. The allegations in paragraph 34 state legal conclusions and speculation to which no answer is required.

35. Denied.

36. Denied.

**V. DEMAND FOR RELIEF**

The remainder of the plaintiff's Complaint constitutes a demand for relief, to which no answer is required.

**AFFIRMATIVE DEFENSES**

1. The plaintiff has failed to state a claim for relief under 42 U.S.C. § 1983, where the facts pled fail to establish a violation of a federal or constitutional right, and thus Count III should be dismissed under Mass. R. Civ. P. 12(b)(6).

2. The plaintiff has failed to state a claim for relief under G.L. c. 12, § 11I, where the facts pled fail to establish any threat, intimidation or coercion, or other attempt to interfere by threats, intimidation or coercion, in a right or rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth. Count III must therefore be dismissed under Mass. R. Civ. P. 12(b)(6).

3. The plaintiff has failed to state a sufficient claim for injunctive relief involving a state agency or official and so Count IV should be dismissed under Mass. R. Civ. P. 12(b)(6).

4. The state defendants hereby gives notice that they intend to rely upon such other and further defenses as may become available or apparent during further proceedings in this action and they reserve the right to amend their Answer and to assert any such defense by appropriate motion.

Respectfully submitted,

DAVID J. COTNEY, in his capacity as the Commissioner of Banks, and the MASSACHUSETTS DIVISION OF BANKS

By their attorney,

MAURA HEALY
ATTORNEY GENERAL

Suleyken D. Walker, BBO NO. 654933
Assistant Attorney General
Office of the Attorney General
Government Bureau
One Ashburton Place
Boston, MA 02108
(617) 963-2981
Suleyken.Walker@state.ma.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) on 1/29/2016

# Exhibit 3

*Chap.* 656 AN ACT RELATIVE TO COLLECTION AGENCIES.

*Be it enacted, etc., as follows:*

Persons, etc., conducting collection agencies to give bond.

SECTION 1. No person, partnership, association or corporation shall conduct a collection agency, collection bureau or collection office in this commonwealth, or engage in this commonwealth solely in the business of collecting or receiving payment for others of any account, bill or other indebtedness, or engage in this commonwealth solely in the business of soliciting the right to collect or receive payment for another of any account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of any account, bill or other indebtedness, unless, at the time of conducting such collection agency, collection bureau, collection office or collection business, or of doing such advertising or soliciting, such person, partnership, association or corporation, or the person, partnership, association or corporation for whom he or it may be acting as agent, shall have on file with the treasurer and receiver general a good and sufficient bond as hereinafter specified.

Amount and provisions of bond, etc.

SECTION 2. Said bond shall be in the sum of five thousand dollars and shall provide that the person, partnership, association or corporation giving the same shall, upon written demand, pay and turn over to or for the person, partnership, association or corporation for whom any account, bill or other indebtedness is taken for collection the proceeds of such collection in accordance with the terms of the agreement upon which such account, bill or other indebtedness was received for collection. Said bond shall be in such form and shall contain such further provisions and conditions as the treasurer and receiver general, with the advice and consent of the governor and council shall deem necessary or proper for the protection of the persons, partnerships, associations or corporations for whom said accounts, bills or other indebtedness are taken for collection.

Term of bond, etc.

SECTION 3. Said bond shall be for the term of one year from the date thereof, unless the treasurer and receiver general and the person, partnership, association or corporation giving the same shall agree on a longer period. No action on said bond shall be begun after two years from the expiration of the bond.

SECTION 4. Said bond shall be executed by said persons, partnerships, associations or corporations as principal, with at least two good and sufficient sureties who shall be residents and owners of real estate within the commonwealth. The bond shall not be accepted unless approved by the treasurer and receiver general, and, upon such approval, it shall be filed in his office. The bond of a surety company may be received if approved as aforesaid; or cash may be accepted in lieu of sureties. Sureties.

SECTION 5. The treasurer and receiver general shall keep a record of the bonds filed with him under the provisions hereof, with the names, places of residence and places of business of the principals and sureties, and the name of the officer before whom the bond was executed or acknowledged; and the record shall be open to public inspection. Record of bonds to be kept.

SECTION 6. No bond required by this act to be delivered to the treasurer and receiver general shall be approved and accepted by him until it has been examined and approved by the bank commissioner. To be approved by the bank commissioner.

SECTION 7. Any person, member of a partnership or officer of an association or corporation who fails to comply with any provision of this act shall be subject to a fine of not more than five hundred dollars or to imprisonment for not more than three months in the house of correction, or to both such fine and imprisonment. Penalty.

SECTION 8. This act shall not apply to an attorney-at-law duly authorized to practice in this commonwealth, to a national bank, or to any bank or trust company duly incorporated under the laws of this commonwealth. Not to apply in certain cases.

SECTION 9. This act shall take effect on the first day of December, nineteen hundred and ten. Time of taking effect.

*Approved June 15, 1910.*

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AN ACT TO AUTHORIZE THE BOSTON MUTUAL LIFE INSURANCE COMPANY TO ESTABLISH A GUARANTY CAPITAL. *Chap. 657*

*Be it enacted, etc., as follows:*

SECTION 1. The Boston Mutual Life Insurance Company, a corporation existing and doing business under the laws of this commonwealth, is hereby authorized to establish a guaranty capital of one hundred and fifty thousand dollars, divided into shares of one hundred dollars each, which shall be invested in the same securities in which The Boston Mutual Life Insurance Company may establish a guaranty capital.

AN ACT AUTHORIZING THE CITY OF SOMERVILLE TO RETIRE JOHN J. CURTIN AT THE ANNUAL RATE OF COMPENSATION RECEIVED BY HIM AT THE DATE OF RETIREMENT. *Chap.* 708

*Be it enacted, etc., as follows:*

SECTION 1. John J. Curtin, a member of the police department of the city of Somerville and a member of the retirement system of said city, may apply for a pension and be retired, at the weekly rate of his pay in effect at the time of retirement, on account of an accident incurred in the performance of his duty, which resulted in permanent injury to his neck and the loss of his right leg above the knee.

SECTION 2. This act shall take full effect upon its acceptance by vote of the board of aldermen of the city of Somerville, subject to the provisions of its charter, but not otherwise.

*Approved August 22, 1949.*

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AN ACT MAKING CERTAIN PROVISIONS OF THE RETIREMENT LAWS APPLICABLE TO THE PENSION RIGHTS OF TIMOTHY P. HOGAN, A RETIRED FIREMAN OF THE CITY OF SPRINGFIELD. *Chap.* 709

*Be it enacted, etc., as follows:*

For the purpose of promoting the public good, and notwithstanding the provisions of any general or special law, the provisions of sections eighty-one A and eighty-one B of chapter thirty-two of the General Laws are hereby made applicable to the pension rights of Timothy P. Hogan, a retired fireman of the city of Springfield.

*Approved August 22, 1949.*

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AN ACT INCREASING THE SALARY OF THE JUSTICE OF THE MUNICIPAL COURT OF THE DORCHESTER DISTRICT. *Chap.* 710

*Be it enacted, etc., as follows:*

Section 78 of chapter 218 of the General Laws is hereby amended by inserting before the first sentence the following sentence: — The salary of the justice of the municipal court of the Dorchester district shall be eight thousand dollars., — and by striking out, in lines 4 and 5, as appearing in section 3 of chapter 667 of the acts of 1948, the words "municipal court of the Dorchester district,". G. L. (Ter. Ed.), 218, § 78, amended. Salary.

*Approved August 22, 1949.*

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AN ACT FURTHER REGULATING COLLECTION AGENCIES. *Chap.* 711

*Be it enacted, etc., as follows:*

SECTION 1. Chapter 93 of the General Laws is hereby amended by striking out section 24, as appearing in the Tercentenary Edition, and inserting in place thereof the following: — *Section 24.* No person, partnership, association or corporation, not being an attorney at law duly author- G. L. (Ter. Ed.), 93, § 24 amended. Collection agencies to be licensed by bank commissioner, etc.

ized to practice in the commonwealth, a national bank or a bank or trust company incorporated in the commonwealth, shall conduct a collection agency, collection bureau or collection office, or engage in the commonwealth solely in the business of collecting or receiving payment for others of any account, bill or other indebtedness, or engage in the commonwealth solely in soliciting the right to collect or receive payment for another of any account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of any account, bill or other indebtedness, without first obtaining from the commissioner of banks a license to carry on said business in the place where the business is to be transacted, nor unless such person, partnership, association or corporation or the person, partnership, association or corporation for whom he or it may be acting as agent has on file with the state treasurer a good and sufficient bond. The commissioner of banks may require such financial statements and references of all applicants for a license as he deems necessary. He may also make or cause to be made an independent investigation concerning each applicant's reputation, integrity and net worth, at the expense of the applicant, and for that purpose may require such deposits against the costs thereof, not to exceed twenty-five dollars, as he deems adequate.

G. L. (Ter. Ed.), 93, new § 24A, added.

License, term, contents, etc.

SECTION 2. Said chapter 93 is hereby further amended by inserting after section 24, as so appearing, the following section: — *Section 24A.* Licenses granted by the commissioner of banks under section twenty-four shall be for a period of one year from October first. Each such license shall plainly state the name of the licensee, and the city or town, with the name of the street, and the number, if any, of the place where the business is to be carried on, and shall be posted in a conspicuous place in the office where the business is transacted. The fee for all such licenses shall be not more than twenty-five dollars. If the licensee desires to carry on business in more than one place, he shall procure a license for each place where the business is to be conducted.

*Approved August 22, 1949.*

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*Chap. 712* AN ACT RELATIVE TO THE POWERS OF CITIES AND TOWNS AND FINANCIAL ASSISTANCE BY THE COMMONWEALTH IN PROVIDING HOUSING FOR VETERANS OF WORLD WAR II.

*Be it enacted, etc., as follows:*

Chapter 372 of the acts of 1946 is hereby amended by striking out section 12, as most recently amended by section 2 of chapter 613 of the acts of 1948, and inserting in place thereof the following: — *Section 12.* The commonwealth shall reimburse any city or town which has appropriated and expended money for the purpose of providing shelter for veterans under section six in the manner authorized by paragraph (3) thereof at any time after the twenty-third

**Chap. 670.** AN ACT FURTHER REGULATING COLLECTION AGENCIES.

*Be it enacted, etc., as follows:*

SECTION 1. Chapter 93 of the General Laws is hereby amended by striking out section 24, as most recently amended by section 1 of chapter 711 of the acts of 1949, and inserting in place thereof the following section: — *Section 24.* No person not being an attorney at law authorized to practice in the commonwealth, a bank as defined in chapter one hundred and sixty-seven, a national banking association having its main office in the commonwealth, or a person whose usual business is not that of a collection agency, who acts as agent for such bank or national banking association for the purpose of collecting any accounts, bills or other indebtedness which arise from such person's usual business, or an agent or independent contractor employed for the purpose of collecting charges or bills owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the department of public utilities or the division of insurance in so far as said person collects charges or bills only for such landlord or supervised corporations, shall directly or indirectly conduct a collection agency, or engage in the commonwealth in the business of collecting or receiving payment for others of any account, bill or other indebtedness, or engage in the commonwealth in soliciting the right to collect or receive payment for another of any account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of any account, bill or other indebtedness, without first obtaining from the commissioner of banks a license to carry on said business, nor unless such person or the person for whom he or it may be acting as agent has on file with the state treasurer a good and sufficient bond.

SECTION 2. Said chapter 93 is hereby further amended by striking out section 24A, inserted by section 2 of said chapter 711, and inserting in place thereof the following section: — *Section 24A.* Licenses granted by the commissioner under section twenty-four shall be for a period of one year from October first. Each license shall plainly state the name and business address of the licensee, and shall be posted in a conspicuous place in the office where the business is transacted. The fee for all such licenses shall be not more than fifty dollars. If the licensee desires to carry on business in more than one place, he shall procure a license for each place where the business is to be conducted.

SECTION 3. Said chapter 93 is hereby further amended by inserting after said section 24A the following two sections: —

*Section 24B.* The commissioner may require such financial statements and references of all applicants for a license as he deems necessary; and make or cause to be made an independent investigation concerning the applicant's reputation, integrity and net worth, at the expense of the applicant, and for that purpose may require such deposits against the cost thereof, not to exceed twenty-five dollars, as he deems adequate.

*Section 24C.* The commissioner may investigate the collection records of a licensee, and for that purpose the commissioner shall have free access to the books and papers of a licensee relating thereto. The commissioner may assess the cost of said investigation to the licensee. If a licensee violates any provision of sections twenty-four through twenty-five or fails to maintain its financial condition sufficient to qualify for a license on an original application or for such other just cause as the commissioner

may determine, the commissioner may, after notice and hearing pursuant to the provisions of chapter thirty A, revoke a license or suspend said license for such period as he may deem proper.

SECTION 4. Section 25 of said chapter 93, as appearing in the Tercentenary Edition, is hereby amended by striking out, in line 1, the words "Said bond" and inserting in place thereof the words: — The bond required under section twenty-four. *Approved July 16, 1962.*

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**Chap. 671.** AN ACT AUTHORIZING THE COMMONWEALTH TO SELL AND CONVEY CERTAIN LAND IN THE TOWN OF PLYMOUTH TO THE PILGRIM SOCIETY.

*Be it enacted, etc., as follows:*

The commissioner of public works, in the name of and on behalf of the commonwealth, is hereby authorized, subject to approval by the governor and council, to sell and convey to the Pilgrim Society, by a deed approved as to form by the attorney general, all the right, title and interest of the commonwealth in and to certain land situated in the town of Plymouth and described in a certain instrument recorded in the Plymouth county registry of deeds, Book 1387, page 98; provided, that said deed shall provide that all right, title and interest shall revert to and revest in the commonwealth at any time said land ceases to be used by said society for its purposes. *Approved July 16, 1962.*

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**Chap. 672.** AN ACT AUTHORIZING CITIES AND TOWNS TO PARTICIPATE WITH THE WATER RESOURCES COMMISSION IN THE DEVELOPMENT OF WATER RESOURCES.

*Be it enacted, etc., as follows:*

SECTION 1. Section 5 of chapter 40 of the General Laws is hereby amended by adding after clause (53), added by chapter 236 of the acts of 1960, the following clause: —

(54) For payment to the commonwealth of the town's share of the cost of construction, including acquisition of land, of multi-purpose reservoirs and other water resource developments, which are to be constructed under the direction of the water resources commission.

SECTION 2. Section 8 of chapter 44 of the General Laws is hereby amended by inserting after clause (7A) the following clause: —

(7B) For the payment of the town's share of the cost to increase the storage capacity of any reservoir, including land acquisition, constructed by the water resources commission for flood prevention or water resources utilization, twenty years.

SECTION 3. Said section 8 of said chapter 44 is hereby amended by striking out the last paragraph, as amended by section 6 of chapter 592 of the acts of 1960, and inserting in place thereof the following paragraph: —

Debts for purposes mentioned in clauses (3), (4), (5), (6), (7), (7A) and (7B) of this section shall not be authorized to an amount exceeding ten per cent of the last preceding assessed valuation of the city or town. *Approved July 16, 1962.*

**Chap. 178.** AN ACT PROHIBITING THE SALE OF EXPLODING CIGARS OR CIGARETTES.

*Be it enacted, etc., as follows:*

Chapter 148 of the General Laws is hereby amended by striking out section 52A, inserted by chapter 258 of the acts of 1950, and inserting in place thereof the following section: —

*Section 52A.* Whoever sells or keeps for sale so-called exploding matches, exploding cigars or exploding cigarettes shall be punished by a fine of not more than one hundred dollars. *Approved April 25, 1967.*

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**Chap. 179.** AN ACT REPEALING THE PROVISION OF LAW REQUIRING CO-OPERATIVE BANKS TO FILE COPIES OF BONDS OF CERTAIN OFFICERS AND EMPLOYEES THEREOF WITH THE COMMISSIONER OF BANKS.

*Be it enacted, etc., as follows:*

Section 11 of chapter 170 of the General Laws, as appearing in section 1 of chapter 371 of the acts of 1950, is hereby amended by striking out the third sentence. *Approved April 25, 1967.*

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**Chap. 180.** AN ACT AUTHORIZING THE COMMISSIONER OF BANKS TO ESTABLISH REGULATIONS PERTAINING TO THE BUSINESS OF COLLECTION AGENCIES.

*Be it enacted, etc., as follows:*

Section 24 of chapter 93 of the General Laws, as most recently amended by section 1 of chapter 670 of the acts of 1962, is hereby further amended by adding the following sentence: — The commissioner may from time to time establish such regulations pertaining to the conduct of the business as he may deem necessary.

*Approved April 25, 1967.*

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**Chap. 181.** AN ACT EXTENDING THE PERIOD DURING WHICH MEMBERS OF THE ARMED FORCES OF THE UNITED STATES MAY USE CERTAIN MILITARY MOTOR VEHICLE REGISTRATIONS AND NUMBER PLATES.

*Be it enacted, etc., as follows:*

Section 9B of chapter 90 of the General Laws is hereby amended by striking out, in line 8 as appearing in chapter 471 of the acts of 1957, the word "five" and inserting in place thereof the word: — thirty.

*Approved April 25, 1967.*

F. The seller or holder shall mail or deliver to the buyer the statement required by subsection D for each billing cycle, at least nine days before the end of the next succeeding billing cycle. If the seller or holder fails to mail or deliver such statement within the specified period, he shall not be entitled to any finance charge with respect to the next succeeding billing cycle based upon the previous balance of such next succeeding billing cycle. If any such finance charge is assessed or collected, the buyer shall receive a credit or refund for any such finance charge assessed or collected other than in accordance with the provisions of this subsection within the two billing cycles following such assessment or collection. The failure to provide such credit or refund within the period specified shall subject the seller or holder to the penalties provided in section thirty.

*Approved August 24, 1969.*

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**Chap. 789.** AN ACT RELATIVE TO REIMBURSEMENT TO THE COMMONWEALTH OF THE COST OF THE SUPERVISION OF COLLECTION AGENCIES BY THE COMMISSIONER OF BANKS AND INCREASING LICENSE FEES.

*Be it enacted, etc., as follows:*

SECTION 1. Section 24A of chapter 93 of the General Laws, as appearing in section 2 of chapter 670 of the acts of 1962, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:—The fee for all such licenses shall be one hundred dollars.

SECTION 2. Section 24C of said chapter 93, as appearing in section 3 of said chapter 670 of the acts of 1962, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:—The commissioner may assess the licensee forty dollars per day for each man participating in said investigation.

*Approved August 24, 1969.*

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**Chap. 790.** AN ACT RELATIVE TO REIMBURSEMENT TO THE COMMONWEALTH OF THE COST OF THE SUPERVISION OF SMALL LOAN COMPANIES BY THE COMMISSIONER OF BANKS AND INCREASING LICENSE FEES.

*Be it enacted, etc., as follows:*

SECTION 1. Section 97 of chapter 140 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the second sentence thereof the following sentence:—The commissioner shall assess the licensee forty dollars per day for each man participating therein.

SECTION 2. Said chapter 140 is hereby further amended by striking out section 102, as so appearing, and inserting in place thereof the following section:—

*Section 102.* Each application for a license shall be accompanied by an investigation fee of fifty dollars, said amount to be credited to the license fee if a license is granted. The fee for all licenses granted under

**Chap. 186.** AN ACT REQUIRING REGISTRATION WITH THE COMMISSIONER OF BANKS FOR THE SALE OF CERTAIN SECURITIES BY SMALL LOAN COMPANIES.

*Be it enacted, etc., as follows:*

Chapter 140 of the General Laws is hereby amended by inserting after section 96 the following section: —

*Section 96A.* No security, as defined in clause (*k*) of section four hundred and one of chapter one hundred and ten A, issued by a person licensed under section ninety-six shall be sold or advertised for sale to the public without a permit issued by the commissioner and subject to such conditions as the commissioner shall determine. The commissioner may, after notice and hearing, revoke such permit for violation of any such condition.

*Approved May 8, 1975.*

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**Chap. 187.** AN ACT ESTABLISHING INVESTIGATION FEES FOR RELOCATIONS OF OFFICES OF CERTAIN LICENSEES SUPERVISED BY THE COMMISSIONER OF BANKS.

*Be it enacted, etc., as follows:*

SECTION 1. Section 24A of chapter 93 of the General Laws is hereby amended by adding the following two sentences: — Any change of location of an office of a licensee located within the commonwealth shall require the prior approval of the commissioner. Such request for relocation shall be in writing setting forth the reason or reasons for the request, and shall be accompanied by a relocation investigation fee of fifty dollars.

SECTION 2. Section 102 of chapter 140 of the General Laws is hereby amended by adding the following paragraph: —

Any change of location of an office of a licensee shall require the prior approval of the commissioner. Such request for relocation shall be in writing setting forth the reason or reasons for the request, and shall be accompanied by a relocation investigation fee of fifty dollars.

SECTION 3. Section 2 of chapter 255B of the General Laws is hereby amended by adding the following two sentences: — Any change of location of an office of a licensee shall require the prior approval of the commissioner. Such request for relocation shall be in writing setting forth the reason or reasons for the request, and shall be accompanied by a relocation investigation fee of fifty dollars.

SECTION 4. Section 2 of chapter 255C of the General Laws is hereby amended by inserting after the second sentence the following two sentences: — Any change of location of an office of a licensee shall require the prior approval of the commissioner.

Such request for relocation shall be in writing setting forth the reason or reasons for the request, and shall be accompanied by a relocation investigation fee of fifty dollars.

SECTION 5. Section 2 of chapter 255D of the General Laws is hereby amended by adding the following two sentences: — Any change of location of a place of business of a licensee shall require the prior approval of the commissioner. Such request for relocation shall be in writing setting forth the reason or reasons for the request and shall be accompanied by a relocation investigation fee of fifty dollars. *Approved May 8, 1975.*

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**Chap. 188.** AN ACT PROVIDING THAT A REPRESENTATIVE OF THE MIDDLESEX COUNTY TOURIST AND DEVELOPMENT COUNCIL BE A MEMBER OF THE ADVISORY COMMITTEE ON VACATION TRAVEL ESTABLISHED TO ASSIST THE DEPARTMENT OF COMMERCE AND DEVELOPMENT, AND PROVIDING FOR FINANCIAL ASSISTANCE THERETO.

*Be it enacted, etc., as follows:*

SECTION 1. The first paragraph of section 6 of chapter 23A of the General Laws is hereby amended by striking out the second sentence, as most recently amended by section 6 of chapter 761 of the acts of 1968, and inserting in place thereof the following sentence: — There shall be advisory committees on manpower development training; regional planning; commercial and industrial development; vacation travel, which shall consist of seventeen members including the chief executive officers of the thirteen regional associations known as the Berkshire Hills Conference, Inc., Central Massachusetts Tourist Council, Inc., Essex County Tourist Council of Massachusetts, Inc., Cape Cod Chamber of Commerce, Greater Boston Chamber of Commerce, Martha's Vineyard Chamber of Commerce, Mohawk Trail Association, Nantucket Island Chamber of Commerce, Inc., Pioneer Valley Association, Inc., Plymouth Chamber of Commerce, Inc., Old Sturbridge, Inc., The Middlesex County Tourist and Development Council, and The Tourist Council of Bristol County, Inc., science and technology; international trade; and a women's advisory committee.

SECTION 2. The second paragraph of section 14 of said chapter 23A, added by section 1 of chapter 1038 of the acts of 1973, is hereby amended by inserting after the word "of", in line 3, the words: — The Middlesex County Tourist and Development council, . *Approved May 8, 1975.*

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**Chap. 189.** AN ACT INCREASING THE AMOUNT FOR WHICH PARENTS SHALL BE LIABLE FOR INJURIES OR

# Exhibit 4

# The Commonwealth of Massachusetts

*Division of Banks*
*1000 Washington Street, 10th Floor*
*Boston, Massachusetts 02118*

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY, OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DAVID J. COTNEY
COMMISSIONER OF BANKS


February 10, 2012

[redacted]

Re: Midland Funding, LLC, Complaint ID #2012-0084

[redacted]

The Massachusetts Division of Banks (the "Division") has received the correspondence submitted regarding your request for assistance with Midland Funding, LLC.

After reviewing your correspondence the Division has determined that we are unable to assist you with the issues raised in your complaint as there has been a judgment issued against you in the Lowell District Court. Please note the Division cannot enforce, modify or negate a judgment issued by a court of law. Accordingly, the Division advises you to contact the Lowell District Court, Lawrence Division Clerk's Office for assistance with the issued raised in your complaint.

In addition, after reviewing your complaint, the Division has determined that the debt collection activities appear that they have been conducted by an attorney. Please note the Division's opinion 06-059 does not require an attorney, acting on behalf of a client, to be licensed as a debt collector in the Commonwealth assuming that they are licensed in the Commonwealth to practice law. Additionally, please note the Division's Opinion 06-060 does not require debt buyers that engage only in the practice of purchasing delinquent consumer debt for investment purposes but is not directly engaged in the collection of these debts to be licensed with the Division as a debt collector. Copies of the Division's Opinions are enclosed for your review.

Please contact the Massachusetts Attorney General's Office at (617) 727-2200 should you wish to file a complaint against Midland Funding, LLC. In addition, please note that the Massachusetts Board of Bar Overseers ("BBO") is responsible for the supervision of attorneys licensed to practice law in the Commonwealth. The BBO can be reached at (617) 728-8700 should you have any questions or concerns.

The Division appreciates your concerns regarding Midland Funding, LLC and will maintain a copy of your complaint on file should similar instances arise in the future.

Sincerely,

Massachusetts Division of Banks
Consumer Assistance Unit

# The Commonwealth of Massachusetts

*Division of Banks*
*1000 Washington Street, 10th Floor*
*Boston, Massachusetts 02118*

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY, OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DAVID J. COTNEY
COMMISSIONER OF BANKS


April 17, 2012

[redacted]

Re: Midland Funding, LLC
Lustig, Glaser & Wilson, P.C.

[redacted]

The Massachusetts Division of Banks (the "Division") has received your request for information on the licensing status of the two entities noted above.

The Division's records do not reflect Midland Funding, LLC or Lustig, Glaser & Wilson, PC as being licensed to conduct debt collection in the Commonwealth. However, please note the Division's Opinion 06-060 does not require debt buyers that engage only in the practice of purchasing delinquent consumer debt for investment purposes without undertaking any activities to directly collect the debt to be licensed with the Division as a debt collector. Please note the Division's opinion 06-059 does not require an attorney, acting on behalf of a client, to be licensed as a debt collector in the Commonwealth so long as they are licensed in the Commonwealth to practice law. Copies of the Division's Opinions are enclosed for your review.

In addition, your correspondence states that Midland Funding, LLC has received a default judgment against you. Please note the Division cannot enforce, modify or negate a judgment issued by a court of law. Accordingly, the Division advises you to contact the Court Clerk's Office for assistance with the issued raised in your complaint. Additionally, you may wish to speak to an attorney to discuss your legal rights under applicable state and federal laws. The Division advises contacting the Massachusetts Bar Association Lawyer Referral Service at (800) 392-6164.

The Division appreciates your concerns regarding the aforementioned companies and will maintain a copy of your complaint on file should similar instances arise in the future.

Sincerely,

Massachusetts Division of Banks
Consumer Assistance Unit

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY, OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DAVID J. COTNEY
COMMISSIONER OF BANKS

November 1, 2012

Rory Boyle
Member
Merriam Investments LLC
316 84th Street, #1F
Brooklyn, NY 11209

Dear Ms. Boyle:

This letter is in response to your correspondence dated July 2, 2012 to the Division of Banks (the "Division") in which you request an opinion relative to whether a passive debt buyer is required to be licensed as a debt collector in order to collect debts in the Commonwealth of Massachusetts.

You state that your company is a passive debt buyer engaged in the business of acquiring portfolios of past due accounts receivable for the purpose of collections. You also note that all accounts are purchased without recourse and that all collection activity on the accounts your company purchases are outsourced to 3rd party debt collectors and law firms licensed to perform 3rd party debt collection in Massachusetts. You specifically inquire whether your company is required under the circumstances to obtain a debt collector license.

The Division of Banks issued an industry letter on June 16, 2006 pertaining to the licensing regulation applicable to debt buyers. In addition, the Division of Banks issued an opinion letter on October 13, 2006 pertaining to "passive" debt buyers. It is the position of the Division that a debt buyer who purchases debt in default but is not directly engaged in the collection of these purchased debts is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice law in the Commonwealth. *See* Opinion 006059. These documents are enclosed for your review.

Please be advised that effective as of March 2, 2012, the Massachusetts Attorney General has issued new debt collection regulations which include the collection of debts owned by passive debt buyers and impose significant new obligations on persons subject to those regulations. Such amended regulations include a definition of "creditor" as "any person and his agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him by a debtor and shall also

include a buyer of delinquent debt who hires a third party or an attorney to collect such debt..," 940 CMR 7.03.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division. The Division will review other fact patterns on a case by case basis.

Sincerely,

Sandra Clarke,
Chief Operating Officer

O12012

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

DEVAL L. PATRICK
GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

BARBARA ANTHONY,
UNDERSECRETARY, OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DAVID J. COTNEY
COMMISSIONER OF BANKS

March 4, 2014

Mr. Ashley Taylor, Jr.
Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
P.O. Box 1122 (23218-1122)
Richmond, Virginia 23219

Dear Mr. Taylor:

This letter is in response to your correspondence dated October 30, 2013 to the Division of Banks (Division) in which you request an opinion relative to whether a passive debt buyer is required to be licensed as a debt collector in order to engage in the collection related activities described in your letter in Massachusetts.

In your correspondence you describe your client, Midland Funding, LLC (Midland Funding) as an indirect passive debt buying subsidiary of Encore Capital Group, Inc. (Encore). You explain that Midland Funding's only debt collection "activity" is that of being the named plaintiff in lawsuits brought against consumers on debts it has acquired, in circumstances where those lawsuits are filed on Midland Funding's behalf by attorneys licensed to practice law in the Commonwealth of Massachusetts. Midland Funding is described as having no employees and as a vehicle for holding title to debt portfolios purchased in its name.

You also state that another wholly-owned subsidiary of Encore, Midland Credit Management, Inc. (MCM), pursuant to a written Servicing Agreement, is the only entity involved in direct debt collection activities in Massachusetts for accounts owned by Midland Funding. MCM is licensed as a debt collector in Massachusetts pursuant to General Laws chapter 93, sections 24 through 28, inclusive (Debt Collection Law) and the Division's regulation 209 CMR 18.00 *et seq.*

The Division issued an Industry Letter on June 16, 2006 pertaining to the licensing regulation applicable to debt buyers. This letter confirmed that a person purchasing a debt after default who otherwise meets the definition of a debt collector would have to be licensed by the Commonwealth as a debt collector. In response to inquiries the Division received regarding the Industry Letter, the Division issued an opinion letter (Opinion 006060) on October 13, 2006 pertaining to "passive debt buyers," so called, or debt buyers that engage only in the practice of purchasing consumer debts in default for investment purposes without engaging in any activities to directly collect on the debt. The October 13th letter concluded that a passive debt buyer is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice law in the Commonwealth.

The Division has subsequently issued numerous opinions addressing various issues relating to the indirect, passive debt buying industry. Most recently on November 1, 2012, the Division issued an opinion (Opinion Letter O12012) which affirmed that a debt buyer who purchases debt in default, but is not directly engaged in the collection of these purchased debts, is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice law in the Commonwealth.

Based on the opinions set forth above, the Division has concluded that Midland Funding, as a passive debt buyer, is not a debt collector under the Debt Collection Law and therefore does not have to obtain a license from the Division for the activities described. You should note, however, that effective as of March 2, 2012, the Massachusetts Attorney General issued revised debt collection regulations which, under 940 CMR 7.03, include a definition of "creditor" as "any person and his agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt..." Although the Division has determined that Midland Funding does not require a debt collector license to engage in the activities described, Midland Funding should review 940 CMR 7.00 *et seq.* in its entirety with consideration of the regulation's applicability to Midland Funding's passive debt buyer activities in Massachusetts.

Please note that the Division continues to monitor ongoing developments at both the state and federal levels on the laws and regulations governing debt collection practices, including rules potentially impacting passive debt buyers, in assessing whether a reconsideration of the positions expressed in Opinion Letter O06060 is warranted.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division. The Division will review other fact patterns on a case by case basis.

Sincerely,

Merrily Gerrish
Deputy Commissioner of Banks
and General Counsel

O13020

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# Exhibit 5

318 Conn. 652
Supreme Court of Connecticut.

PERSELS AND ASSOCIATES, LLC
v.
BANKING COMMISSIONER.

No. 19359.
|
Argued April 23, 2015.
|
Decided Sept. 15, 2015.

**Synopsis**

**Background:** Law firm engaged in debt negotiation services sought judicial review of Banking Commissioner's determination that firm did not qualify for exemption from debt negotiation statutes under the attorney exception. The Superior Court, Judicial District of New Britain, Prescott, J., 2014 WL 1717246, affirmed. Firm appealed.

**[Holding:]** The Supreme Court, Vertefeuille, J., held that law firm's services constituted practice of law, and thus attorney exception statute was unconstitutional to the extent that it permitted non-judicial regulation of firm's services.

Reversed and remanded.

West Headnotes (9)

[1] **Administrative Law and Procedure**
⇐ Scope

In reviewing a trial court decision affirming an administrative declaratory ruling, in which the agency made no factual findings, but instead assumed the truth of the facts as pled, the reviewing court likewise takes the facts to be those alleged in the complaint, construing them in the manner most favorable to the pleader.

Cases that cite this headnote

[2] **Appeal and Error**
⇐ Review Dependent on Whether Questions Are of Law or of Fact

Supreme Court's review of a claim that a legislative delegation of authority violates the constitutional separation of powers is plenary. C.G.S.A. Const. Art. 2.

Cases that cite this headnote

[3] **Constitutional Law**
⇐ Purposes of separation of powers

**Constitutional Law**
⇐ Encroachment in general

No branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise thereof; thus, the separation of powers doctrine serves a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power. C.G.S.A. Const. Art. 2.

Cases that cite this headnote

[4] **Constitutional Law**
⇐ Encroachment on Judiciary

A statute violates the constitutional mandate for a separate judicial magistracy only if it (1) represents an effort by the legislature to exercise a power which lies exclusively under the control of the courts or (2) if it establishes a significant interference with the orderly conduct of the Superior Court's judicial functions. C.G.S.A. Const. Art. 2.

Cases that cite this headnote

[5] **Attorney and Client**
⇐ Jurisdiction to admit

The judicial power includes the exclusive authority to fix qualifications for, as well as admit persons to, the practice of law in the state. C.G.S.A. Const. Art. 2.

Cases that cite this headnote

[6] **Attorney and Client**

Power and duty to control

**Attorney and Client**

Jurisdiction of Courts

The authority to discipline and regulate the conduct of counsel is a fundamental judicial power. C.G.S.A. Const. Art. 2.

Cases that cite this headnote

[7] **Antitrust and Trade Regulation**

Validity

**Attorney and Client**

Miscellaneous particular acts or omissions

**Constitutional Law**

Practice of law

Law firm's debt negotiation services constituted "practice of law," and thus statute providing exemption from requirements of debt negotiation statutes only for an attorney who was natural person and whose debt negotiation service was merely "an ancillary matter to such attorney's representation of a client" was unconstitutional to the extent that it permitted non-judicial regulation of firm's services; law firm held itself out as engaged in the practice of law, firm provided debt negotiation services in context of consulting with clients about legal options, firm assisted clients in preparing answers or complaints in the event of litigation, and firm's services were provided directly by attorneys or by support staff under direct supervision and control of attorneys. C.G.S.A. Const. Art. 2; C.G.S.A. § 36a–671c(1); Practice Book 1998, § 2–44A; Rules of Prof.Conduct, Rule 5.5.

Cases that cite this headnote

[8] **Attorney and Client**

Miscellaneous particular acts or omissions

The fact that lay people legally may perform debt negotiation services does not mean that such services do not constitute the "practice of law" when engaged in by an attorney in the context of an attorney-client relationship. Practice Book 1998, § 2–44A; Rules of Prof.Conduct, Rule 5.5.

Cases that cite this headnote

[9] **Antitrust and Trade Regulation**

Persons and transactions covered

**Attorney and Client**

Miscellaneous particular acts or omissions

**Constitutional Law**

Practice of law

Although the separation of powers provision of the Connecticut constitution requires a presumption, for purposes of statute providing exemption from requirements of the debt negotiation statute, that an attorney who purports to provide debt negotiation services within the context of an attorney-client relationship is actually engaged in the practice of law, that presumption may be overcome where the attorney has failed to (1) exercise meaningful oversight over debt negotiation staff, (2) provide any genuine legal advice or other legal services, or (3) maintain a bona fide attorney-client relationship with the client. C.G.S.A. Const. Art. 2; C.G.S.A. § 36a–671c(1); Practice Book 1998, § 2–44A; Rules of Prof.Conduct, Rule 5.5.

Cases that cite this headnote

**West Codenotes**

**Held Unconstitutional**

C.G.S.A. § 36a–671c

**Attorneys and Law Firms**

****594** Robert M. Frost, Jr., Bridgeport, for the appellant (plaintiff).

Patrick T. Ring, assistant attorney general, with whom were Matthew J. Budzik, assistant attorney general, and, on the brief, George Jepsen, attorney general, for the appellee (defendant).

ROGERS, C.J., and PALMER, ZARELLA, EVELEIGH, ESPINOSA, ROBINSON and VERTEFEUILLE, Js.

**Opinion**

VERTEFEUILLE, J.

*654 Connecticut's debt negotiation statutes, General Statutes §§ 36a–671 through 36a–671e,[1] authorize the defendant, the Banking Commissioner (commissioner), to license and regulate persons engaged in the debt negotiation business. Attorneys who provide debt negotiation services are not exempted generally from such regulation, except those attorneys "admitted to the practice of law in [Connecticut] who [engage] or [offer] to engage in debt negotiation as an ancillary matter to such [attorneys'] representation of a client...." General Statutes § 36a–671c(1)(attorney exception). The dispositive question presented by this appeal[2] is whether the debt negotiation statutes unduly permit the commissioner to interfere with the Judicial Branch's regulation of the practice of law and, therefore, violate the separation of powers provision contained in article second of the constitution of Connecticut.[3] We conclude that § 36a–671c offends the *655 state constitution. We therefore reverse the judgment of the trial court, which rejected the plaintiff's constitutional challenge and dismissed its administrative appeal.

The present appeal arises from a petition for a declaratory ruling that the plaintiff, Persels & Associates, LLC, a national consumer advocacy law firm, filed with the commissioner in 2012, seeking a determination that the plaintiff is exempt from the debt negotiation statutes. Before reviewing the procedural history of the case, it will be instructive to consider briefly the relevant statutory scheme, its history, and the mischief to which it is directed.

Section 36a–671(a)(1) defines debt negotiation as "for or with the expectation of a fee, commission or other valuable consideration, assisting a debtor in negotiating or attempting to negotiate on behalf of a debtor the terms of a debtor's obligations with one or more mortgagees or creditors of the debtor, including the negotiation of short sales of residential property or foreclosure rescue services...." In his declaratory **595 ruling on the plaintiff's petition, the commissioner described the origins of Connecticut's debt negotiation statutes: "Since the economic downturn in 2007, the [Department of Banking (department) ] has seen a rising number of complaints against debt negotiation firms.... Connecticut residents and consumers struggling financially are turning to debt negotiators as an alternative to bankruptcy and as a potential solution to their increasing consumer debt levels.... [M]any debt negotiators mislead debtors, collecting thousands of dollars in [up-front] fees without performing any debt negotiation work and often making a debtor's circumstances worse.... [T]he most common business model in the industry ... requires consumers to stop paying their debts, during which time the debtor falls [further] behind in his or her bills, the debt itself *656 increases through interest and collection fees, lawsuits may be brought against the debtor, and the debtor's already weak credit rating will be damaged even further.... Unfortunately, enrolling in a debt negotiation program worsens the family's financial situation in the overwhelming majority of cases.... [C]ompanies like [the plaintiff] ... lure in new customers, take hard-working consumers' limited funds, and ultimately provide little or no value for that money....

"Because of these serious problems, [the commissioner] sought statutory authority to regulate the debt negotiation industry in 2009.... [Number 9–208, §§ 29 through 32, of the 2009 Public Acts, which was codified as § 36a–671 et seq., was intended to] update and increase the power of the [c]ommissioner to try to protect people who find themselves in difficult times and dealing with these kinds of organizations." (Citations omitted; internal quotation marks omitted.)

There are four principal components to the regulatory scheme that the legislature enacted in 2009 to address these concerns. First, any person wanting to offer or provide debt negotiation services in Connecticut must first obtain a license from the department. See General Statutes § 36a–671(b). Before issuing such a license, the commissioner must approve the "financial responsibility, character, reputation, integrity and general fitness" of the applicant; General Statutes § 36a–671(d)(1); and the applicant must pay a fee of $1600; General Statutes § 36a–671(e); and obtain a surety bond. General Statutes § 36a–671d. Second, General Statutes § 36a–671a(b) authorizes the commissioner to conduct an investigation into any debt negotiation transaction, and to discipline anyone he finds to have violated the debt negotiation laws, committed fraud, misappropriated funds, or failed to perform any debt negotiation agreement with a debtor. Specifically, the commissioner may suspend, revoke, or refuse to renew a debt *657 negotiation license; General Statutes § 36a–671a(a); order financial restitution and disgorgement of fees; General Statutes § 36a–50(c); and assess a civil penalty of up to $100,000 per violation. General Statutes § 36a–50(b). Third, the debt negotiation statutes prohibit the charging of up-front fees for such services, and authorize the commissioner to establish a schedule of maximum fees.[4] **596 General Statutes § 36a–671b(b). The commissioner also may review the fees charged by a person offering debt negotiation services and order the reduction of excessive fees. General Statutes §

36a–671a(c). Fourth, the statutes establish various contractual protections that must be afforded to a debt negotiation consumer; General Statutes § 36a–671b(a); and provide that any contract that fails to provide such protections is voidable by the consumer. See General Statutes § 36a–671b(c). For example, each debt negotiation customer must be provided a contract that contains: "(1) a statement certifying that the person offering debt negotiation services has reviewed the consumer's debt ... (2) an individualized evaluation of the likelihood that the proposed debt negotiation services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's residential home from being foreclosed [and (3) a prominent notice that] the consumer [may] cancel or rescind such contract within three business days after the date on which the consumer signed the contract." General Statutes § 36a–671b(a).

***658** Other states enacted similar protections in the wake of the residential mortgage crisis of the last decade,[5] and the Federal Trade Commission passed amendments to its Telemarketing Sales Rule to curb deceptive and abusive debt negotiation practices. Among other things, the new Federal Trade Commission regulations "set forth disclosure requirements for the industry, prohibited certain misrepresentations in the telemarketing of debt relief services, and banned debt relief service companies ... from charging fees to consumers in advance of renegotiating, settling or reducing unsecured debt balances. 16 C.F.R. [§ 310.1 et seq.], 75 We're. [48458] 48460 ( [August] 10, 2010)...." (Citation omitted.)

Connecticut's debt negotiation statutes contain a provision that exempts certain persons from the scope of these regulations and licensing requirements. See General Statutes § 36a–671c. As initially enacted, § 36a–671c provided in relevant part: "The provisions of sections [36a–671 to 36a–671d], inclusive ... shall not apply to the following: (1) Any attorney admitted to the practice of law in this state, when engaged in such practice...." Public Acts 2009, No. 09–208, § 31; see General Statutes (Rev. to 2011) § 36a–671c. This attorney exception presumably reflected the legislature's recognition that, under article second of the state constitution, the Judicial Branch has the exclusive authority to license and regulate the practice of law in this state. See *Lublin v. Brown*, 168 Conn. 212, 228, 362 A.2d 769 (1975).

In 2011, however, the legislature amended § 36a–671c so that the attorney exemption now extends only to an "attorney admitted to the practice of law in this state ***659** who engages or offers to engage in debt negotiation *as an ancillary matter to such attorney's representation of a client* ...." (Emphasis added.) Public Acts 2011, No. 11–216, § 43. The legislative history is silent as to the rationale for this amendment. The commissioner, however, indicates that the department itself lobbied the legislature for the amendment, with the purpose of clarifying and narrowing the scope of the attorney exemption "[t]o combat abuse of the statutory exemption...."

****597** In his declaratory ruling, the commissioner described these alleged abuses as follows: "The increase in state [and federal] regulation ... caused a paradigm shift in the industry whereby debt relief companies changed their business models in an attempt to avoid the [new Federal Trade Commission rules] and state regulation.... One of these models is the so-called 'attorney model,' whereby a debt relief company affiliates itself with local attorneys who purport to do 'legal services' on behalf of clients.... The attorney model has not alleviated the problems in the debt negotiation industry, but at times has created another avenue to mislead consumers. Consumers are told that an attorney will represent them in negotiations with creditors and provide legal assistance when, in fact, the attorney's involvement is minimal or nonexistent.... In many cases, newly admitted attorneys are employed by national debt negotiation firms and consumers are charged excessive [up-front] fees for legal services that consist only of debt negotiation services." (Citations omitted.) The commissioner's findings in this respect echo those of a report recently published by the New York City bar, which report is part of the administrative record in this case. See Association of the Bar of the City of New York, "Profiteering from Financial Distress: An Examination of the Debt Settlement Industry" (May 2012) pp. 77–94 (New York City Bar Report). In any ***660** event, it is this amended attorney exemption that is the subject of the present appeal.

In 2012, pursuant to General Statutes § 4–176, the plaintiff petitioned the commissioner for a declaratory ruling stating that, pursuant to the attorney exception, "a law firm that offers debt negotiation services to its clients using Connecticut attorneys is not required to have a debt negotiation license from the department, when the debt negotiation services are delivered in aid of an attorney's representation of a client, as evidenced by a retainer agreement, the offering of legal advice, and the delivery of other services constituting the practice of law." In support of its petition, the plaintiff alleged the following facts. "[The plaintiff] is a Maryland-based, national consumer

advocate law firm that offers legal services to its clients in connection with compromises of unsecured debt, defense of creditor collection [lawsuits], protection from creditor harassment, and bankruptcy. The firm uses Connecticut lawyers working in tandem with paraprofessional staff to provide these services. The Connecticut lawyers are actively involved in representing the clients and are responsible for the actions of the paraprofessional staff under the Rules of Professional Conduct applicable to lawyers. Although the Connecticut attorneys that provide services on behalf of [the plaintiff] are licensed by the Judicial Branch and regulated by the Statewide Grievance Committee and the Office of Chief Disciplinary Counsel, [the plaintiff] and its Connecticut attorneys do not have a separate license from the [department] to provide debt negotiation services.

"In its retainer agreements with clients, [the plaintiff] agrees to provide, inter alia, debt negotiation services, but it also agrees to provide other legal services clearly constituting the practice of law. As part of the representation, the [plaintiff] assigns a Connecticut attorney to consult with each client about their legal options. This ***661** includes legal advice on topics such as the applicable statute of limitations, the advantages and disadvantages of bankruptcy, garnishment exemptions, and litigation options and strategies. If litigation develops, the assigned Connecticut attorney assists the client in preparing answers to complaints and arbitration demands, drafts responses to discovery (if applicable), ****598** drafts cease and desist letters to creditors, and, when appropriate, helps the client assert claims against creditors who violate the law on collection practices. For an additional fee, the [plaintiff] also offers to provide bankruptcy consultations to those clients who cannot settle their debts outside of bankruptcy. Thus, while it is true that [the plaintiff] specializes in debt-relief matters and most of its clients receive debt-relief services, [the plaintiff] does so in the context of providing legal advice and legal work that goes beyond mere debt negotiation and settlement....

"[The plaintiff] keeps records detailing each attorney's and paralegal's work on behalf of each of its clients. Each attorney is required to make an electronic record of the advice given. A database is used to keep detailed records of every interaction between the clients and the [the plaintiff's] attorney, and [the plaintiff] has agreed to make these records available to the Office of Chief Disciplinary Counsel in the event a grievance is filed by a client to confirm that a Connecticut attorney was actively involved and supervised the paraprofessional staff during the representation."

The plaintiff also submitted with its petition an October, 2011 settlement agreement between the plaintiff and the Office of Chief Disciplinary Counsel, which agreement disposed of grievances that had been brought against three of the plaintiff's attorneys. Under the settlement, the plaintiff agreed, among other things, that: (1) "For each Connecticut client that hires [the plaintiff] to perform, inter alia, debt settlement services, ***662** [the plaintiff] will have procedures and policies in place to ensure that an initial consultation occurs between the Connecticut client and a [plaintiff's] attorney admitted to practice law in Connecticut"; (2) "[the plaintiff] will have procedures and policies in place to ensure that the initial consultation fee is not collected until such time as the initial consultation has occurred and the fee is earned"; and (3) "[the plaintiff] will have [policies], training, and procedures in place to ensure that there is adequate supervision of paralegals and other [nonlawyer] assistants...." The Office of Chief Disciplinary Counsel also recognized that "the nature of [the plaintiff's] practice and the manner in which legal services are rendered through Connecticut attorneys is relatively new...."

Before ruling on the plaintiff's petition, the commissioner invited public comment thereon. Thirteen comment letters were filed in response. One letter, submitted by the Deputy Chief Court Administrator for the Connecticut Judicial Branch, indicated that "[t]he Judicial Branch shares the [department's] concerns regarding the infiltration of debt negotiation firms into our state and the goal of protecting our citizens from unscrupulous tactics used and ineffective services rendered by these unlicensed entities." The Deputy Chief Court Administrator also expressed the concern, however, that the department not unduly encroach on the Judicial Branch's authority to regulate attorney conduct. A second comment letter, submitted on behalf of other national law firms offering debt negotiation services, broadly supported the plaintiff's petition.

The other eleven comment letters opposed the petition and alleged that the plaintiff had omitted material facts about its business operations. These comments were submitted by members of the Connecticut bar, including various consumer protection, bankruptcy, and debt collection/settlement attorneys; a former Chief ***663** Disciplinary Counsel of the State of Connecticut; and six government agencies and nonprofit organizations that serve the interests of low income and other vulnerable ****599** consumers. For the most part, these letters echoed four themes.

First, members of the Connecticut bar and consumer advocate organizations alleged that the plaintiff and other national debt negotiation companies prey on uninformed consumers whose financial problems leave them desperate for assistance and vulnerable to false or misleading marketing claims. The comments alluded to "numerous reports and consumer complaints that unscrupulous entities holding themselves out as debt negotiation firms frequently take advantage of consumers by charging large, [up-front] fees while providing little or no relief...."

The second theme that repeatedly emerged from the public comment letters was that, in its petition, the plaintiff materially misrepresented the nature of its business model. Specifically, commenters alleged that the plaintiff and its affiliates do not in fact engage in the practice of law, they are simply debt negotiation companies masquerading as law firms, and they use attorneys as a facade to circumvent state regulations such as § 36a–671 et seq. The substance of the charge is that although Connecticut attorneys ostensibly oversee the plaintiff's debt negotiation services, in fact these attorneys do little actual work and the arrangement is devoid of any of the indicia of the bona fide practice of law. The public comment letters further contend that, because most established attorneys refuse to lend their support to such a scheme, debt negotiation companies such as the plaintiff are forced to target newly minted attorneys, whom they can more easily exploit.

As a result of these practices, the commenters contend, financially troubled Connecticut consumers have ***664** suffered a range of harms. They are deprived of their limited funds, and are subjected to lawsuits, bank executions, and wage garnishments. In addition, because they are falsely assured that the debt negotiation companies and their attorneys will handle any litigation and settle outstanding debts prior to judgment, consumers are deterred from seeking out bona fide legal assistance.

A third theme frequently echoed by the public comment letters was that these various complaints and allegations have been the subject of numerous legal and administrative actions against the plaintiff in other jurisdictions. The commenters referred the commissioner to individual lawsuits, consumer class actions, attorney grievances, and administrative actions that have been brought against the plaintiff, its officers, or affiliated entities in Florida, Kansas, Maryland, Missouri, North Carolina, and Washington, as well as Connecticut. In particular, they emphasized one decision of the United States Bankruptcy Court for the District of Kansas, which concluded that "[the plaintiff] and [its local Kansas counsel] may hold themselves out as lawyers providing unbundled, limited legal representation, but there is plenty of evidence ... that they walk, swim, and quack like a credit services organization that supplies debt settlement services while posing as a law firm." (Internal quotation marks omitted.) *In re Kinderknecht*, 470 B.R. 149, 185 (Bankr.D.Kan.2012), objections overruled sub nom. *Parks v. Persels & Associates, LLC*, 509 B.R. 345 (D.Kan.2014). Commenters also submitted the results of a Freedom of Information Act request to the Federal Trade Commission that disclosed seventy-four administrative complaints against the plaintiff and approximately 200 complaints against its various affiliates. The commenters contend that these cases cast serious doubt on the plaintiff's claim that its local attorneys are actively involved in each debt negotiation representation.

****600** ***665** The fourth concern raised by many of the public comment letters submitted to the commissioner is that if the tail is truly wagging the dog here, and nonlawyer debt negotiation entities or personnel are both directing the plaintiff's debt negotiation business and performing the majority of the allegedly legal work, then affording firms such as the plaintiff immunity under § 36a–671c will create a regulatory void. Such firms will be exempt from regulation by the department, because they purport to provide legal services under the supervision of Connecticut attorneys. Because they themselves are not Connecticut attorneys, however, they also fall beyond the reach of the Statewide Grievance Committee and the Office of Chief Disciplinary Counsel. Although the local Connecticut attorneys who do such firms' bidding will, of course, be subject to discipline, if those attorneys are merely pawns of the debt negotiation companies, and are not the ones who are managing and profiting from those businesses, then disciplining them will do little either to deter abuses or to protect and recompense vulnerable consumers.

Lastly, one commenter submitted to the commissioner the previously referenced New York City Bar Report, which reiterates and documents many of these allegations. That report concludes, among other things, that: (1) "thousands of New Yorkers have ... experienced net financial loss and lasting financial harm due to their involvement with debt settlement service providers"; New York City Bar Report, supra, p. at 1; (2) "enforcement agencies have filed dozens of enforcement actions against unscrupulous operators"; id.; (3) "[a]n extensive public record details widespread and

systematic deceptive and abusive practices"; id.; and (4) providers' use of the " 'purported attorney model' " to take advantage of loopholes in consumer protection regulations is "especially troubling." Id., p. 2.

*666 Turning to the statutory language, the commissioner determined, as a matter of law, that the attorney exemption contained in § 36a–671c "provides an exemption ... only for a natural person who: (a) is an attorney admitted to the practice of law in Connecticut; and (b) is not retained to perform, and does not perform, debt negotiation services ... as the *primary purpose* of the representation, which shall be determined on a case-by-case basis in light of all of the facts and circumstances.

"In addition, [the] [d]epartment will take a no-action position for a law firm that is a partnership, limited liability company or professional corporation engaging or offering to engage in debt negotiation services ... to be performed and performed exclusively by an attorney admitted to the practice of law in Connecticut who is: (a) a partner or shareholder of the law firm, as the case may be; and (b) the only contact with the debtor and the debtor's mortgagee(s) or creditor(s), as the case may be; and provided that the firm is not retained to perform, and does not perform, debt negotiation services as the primary purpose of the representation, which shall be determined on a case-by-case basis in light of all of the facts and circumstances." (Emphasis added.)

On the basis of the facts alleged in the petition, the commissioner concluded that the plaintiff does not qualify for exemption from the debt negotiation statutes under the attorney exception, because the plaintiff is not a natural person and it performs debt negotiation services, including communications with clients and creditors, through paraprofessional employees who are not attorneys admitted to the practice of law in Connecticut and who are neither shareholders nor partners of the firm. Accordingly, the commissioner ruled that, under **601 its alleged business model, the plaintiff would require licensure in order to offer its debt negotiation *667 services to Connecticut consumers, and its provision of those services would be subject to oversight by the department. [6]

The plaintiff appealed from the commissioner's ruling to the Superior Court, challenging the commissioner's interpretation and application of § 36a–671c. The court, *Prescott, J.*, affirmed the commissioner's declaratory ruling, concluding, as a matter of law, that: (1) the attorney exception applies only to natural persons; (2) it was not improper for the commissioner, in construing § 36a–671c, to adopt a "primary purpose" test pursuant to which the department will take enforcement action for unlicensed debt negotiation activity against an otherwise qualifying attorney or law firm where debt negotiation is, or reasonably could be understood by the debtor to be, the primary purpose of the relationship or the actual services performed; (3) the commissioner did not abuse his discretion in adopting a no action position that exempted only those law firms that provide debt negotiation services solely via partners or shareholders; (4) the plaintiff lacked standing to challenge this no action policy; and (5) because debt negotiation does not constitute the practice of law, § 36a–671c does not unconstitutionally delegate to the department the authority to license and regulate the practice of law.

On appeal to this court, the plaintiff challenges each of these conclusions. Because we agree with the plaintiff as to its fifth challenge, and conclude that the attorney exemption violates the constitutional separation of powers, we need not address the plaintiff's other claims. [7]

[1] [2] *668 The following principles govern the disposition of the plaintiff's constitutional challenge. In reviewing a trial court's dismissal of an appeal from an administrative declaratory ruling, we must take the facts to be those alleged in the complaint, construing them in the manner most favorable to the pleader. See *Pamela B. v. Ment*, 244 Conn. 296, 308, 709 A.2d 1089 (1998). Our review of a claim that a legislative delegation of authority violates the constitutional separation of powers is plenary. See *Perry v. Perry*, 222 Conn. 799, 802, 611 A.2d 400 (1992), overruled on other grounds by *Bryant v. Bryant*, 228 Conn. 630, 636 n. 4, 637 A.2d 1111 (1994), and *Tomasso Bros., Inc. v. October Twenty–Four, Inc.*, 230 Conn. 641, 658–59, 646 A.2d 133 (1994). **602

[3] With respect to the plaintiff's constitutional claim, we have explained that "[t]he primary purpose of [the separation of powers] doctrine is to prevent commingling of different powers of government in the same hands.... The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers.... It is axiomatic that no branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise *669 thereof.... [Thus] [t]he separation of powers doctrine serves

a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power....

[4] "In the context of challenges to statutes whose constitutional infirmity is claimed to flow from impermissible intrusion upon the judicial power, we have refused to find constitutional impropriety in a statute simply because it affects the judicial function.... A statute violates the constitutional mandate for a separate judicial magistracy only if it [1] represents an effort by the legislature to exercise a power which lies exclusively under the control of the courts ... or [2] if it establishes a significant interference with the orderly conduct of the Superior Court's judicial functions." (Citation omitted; internal quotation marks omitted.) *State v. McCahill,* 261 Conn. 492, 505, 811 A.2d 667 (2002). In the present case, the plaintiff alleges that the debt negotiation statutes violate the first prong of this test.

We have held unconstitutional under this test statutes that: interfered with the authority of the Superior Court to set postconviction bail; see id., at 520–20A, 520F, 811 A.2d 667; infringed on the Superior Court's control over the discovery process; see *State v. Clemente,* 166 Conn. 501, 516, 353 A.2d 723 (1974); imposed nonjudicial duties on a judge of the Superior Court; see *Adams v. Rubinow,* 157 Conn. 150, 175, 251 A.2d 49 (1968); and intruded on the power of the judiciary to fix the qualifications for admission to the practice of law. See *Heiberger v. Clark,* 148 Conn. 177, 191, 169 A.2d 652 (1961); see also *State ex rel. Kelman v. Schaffer,* 161 Conn. 522, 529, 290 A.2d 327 (1971) (noting that "General Assembly lacks any power to make rules of administration, practice or procedure which are binding on ... constitutional courts"), overruled on other grounds by ***670** *Serrani v. Board of Ethics,* 225 Conn. 305, 309 n. 5, 622 A.2d 1009 (1993); *Macy v. Cunningham,* 140 Conn. 124, 132, 98 A.2d 800 (1953) (noting that supervision of trusts, including appointment of successor trustees, is purely judicial function, statutory abridgement of which would be unconstitutional). We emphasize that "[i]t has been the policy of our courts more often than not to defer to the legislature, especially in that indefinable area of power that exists between these two departments of government. In those instances, however, where there was a clear invasion of judicial power by the legislature, these cases illustrate that the courts have not hesitated to step in. This was not done as a manifestation of the court's own power but as a duty imposed by the constitution to keep the three great departments of the government separate. Otherwise, acquiescence to a gradual invasion of the judiciary by the legislature would eventually render the former little more than a judicial staff of the legislature. All pretense of independence would disappear and the judicial power would come to rest again in the hands of the General Assembly as it did prior to the year 1818." ****603** *State v. Clemente,* supra, at 515, 353 A.2d 723.

In the present case, the plaintiff contends that, under the facts as alleged, the debt negotiation statutes impermissibly intrude on the judiciary's exclusive authority to regulate attorney conduct and licensure. For example, the plaintiff argues that subjecting Connecticut licensed debt negotiation attorneys, and those persons whom they supervise pursuant to rules 5.3 and 5.5 of the Rules of Professional Conduct, to the licensing and regulatory requirements imposed by the debt negotiation statutes would, among other things, improperly: (1) give the commissioner the authority to determine which attorneys in this state have the "character, reputation, integrity and general fitness" to provide debt negotiation services in conjunction with their practice of law; General Statutes § 36a–671(d)(1); (2) require ***671** that Connecticut attorneys obtain additional licenses from and pay hefty licensing fees to agencies outside the Judicial Branch in order to offer traditional legal services; and (3) impinge on the Judicial Branch's exclusive authority to suspend or disbar attorneys who have engaged in professional misconduct. We agree.

[5] "The judicial power includes such power as the courts, under the English and American systems of jurisprudence, have always exercised in legal and equitable actions." (Internal quotation marks omitted.) *State v. Clemente,* supra, 166 Conn. at 509, 353 A.2d 723. This power includes the exclusive authority to "[fix] qualifications for, as well as [admit] persons to, the practice of law in the state...." (Citations omitted.) Id., at 514–15, 353 A.2d 723; accord *State Bar Assn. v. Connecticut Bank & Trust Co.,* 145 Conn. 222, 231, 140 A.2d 863 (1958). The control of the judiciary over standards for admission to the bar is a matter of long tradition; it reflects and is justified by the unique status of attorneys as commissioners of the Superior Court and the special role they play in the administration of justice. See generally *In re Application of Griffiths,* 162 Conn. 249, 294 A.2d 281 (1972), rev'd on other grounds, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); *Heiberger v. Clark,* supra, 148 Conn. at 186–89, 169 A.2d 652; see also *O'Brien's Petition,* 79 Conn. 46, 49–50, 63 A. 777 (1906) (exclusive power of admitting attorneys has resided with Connecticut judiciary since early eighteenth century), overruled on other grounds by *In re Application of Dinan,* 157 Conn. 67, 72, 244 A.2d 608 (1968). For these reasons, we have made

clear that "[n]o statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law"; (internal quotation marks omitted) *State Bar Assn. v. Connecticut Bank & Trust Co.*, supra, at 232, 140 A.2d 863; and that "[a]ny attempt on the part of the legislative department to direct what the rules [for attorney admission] shall be, and to determine ***672** what qualifications applicants for admission shall possess, transgresses the constitutional power of that department." *Heiberger v. Clark*, supra, at 191, 169 A.2d 652.

**[6]** It also is well established that the "authority to discipline and regulate the conduct of counsel"; *Bartholomew v. Schweizer*, 217 Conn. 671, 677, 587 A.2d 1014 (1991); is a "fundamental judicial power...." Id. at 681, 587 A.2d 1014. Although we have recognized that the legislature exercises concurrent jurisdiction over certain aspects of attorney conduct; see *Heslin v. Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 461 A.2d 938 (1983) (attorneys not exempt from Connecticut Unfair Trade Practices Act, General Statutes § 42–110a et seq.); ****604** we since have clarified that the authority of the legislature to regulate attorney conduct is limited to "the entrepreneurial or commercial aspects of the profession of law." *Haynes v. Yale–New Haven Hospital*, 243 Conn. 17, 35, 699 A.2d 964 (1997). Regulation of the actual practice of law, by contrast, remains the sole province of the judiciary. See *Lublin v. Brown*, supra, 168 Conn. at 228, 362 A.2d 769 ("[attorneys'] admission to practice and their professional conduct after admission are essentially matters to be regulated by the judicial department of the state" [internal quotation marks omitted] ); but see *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 568, 663 A.2d 317 (1995) (judiciary has inherent power to regulate attorney conduct but such power overlaps that of executive branch with respect to discipline of prosecutors); *Lublin v. Brown*, supra, at 228, 362 A.2d 769 (recognizing that "inherent power of the judicial department to control admission to the bar, to discipline its members, and to prescribe rules for their conduct as officers of the court does not confer upon those members immunity or exemption from tax assessments or civil and criminal statutes of general application").

***673** It is clear, then, that the judiciary wields the sole authority to license and regulate the general practice of law in Connecticut. It is equally clear, however, that the judiciary does not exercise exclusive control over attorney conduct insofar as an attorney is not engaged in the practice of law. Accordingly, the central question presented by this appeal is whether an attorney who provides debt negotiation services *as characterized by the plaintiff* in this declaratory action is thereby engaged in the practice of law.

Practice Book § 2–44A defines the practice of law broadly. That section provides in relevant part: "(a) General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

"(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

"(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

"(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

"(4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

***674** "(5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person ...

****605** "(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

" 'Documents' includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options ... and any other papers incident to legal actions and special proceedings...." Practice Book § 2–44A. Section 2–44A, in defining what constitutes the unauthorized practice of law, also provides for certain exceptions, which we discuss hereinafter.

[7] The plaintiff contends, and we agree, that this definition of the practice of law is sufficiently capacious to encompass the various types of services that the plaintiff purports to provide under the auspices of its debt negotiation business. First, the services that the plaintiff provides bear all the external indicia of the practice of law. The plaintiff is a law firm; it purportedly enters into retainer agreements through which it expressly purports to provide legal services; and it alleges in the present action that its Connecticut attorneys enter into attorney-client relationships with each Connecticut client. On the basis of these representations, we must ***675** conclude that the plaintiff "[holds itself] out ... as an attorney, lawyer, counselor, advisor [or otherwise] ... (a) qualified or capable of performing or (b) ... engaged in the business or activity of performing any act constituting the practice of law...." Practice Book § 2–44A(a)(1).

Second, the plaintiff alleges that it provides debt negotiation services in the context of "consult[ing] with each client about their legal options ... [including providing] legal advice on topics such as the applicable statute of limitations, the advantages and disadvantages of bankruptcy, garnishment exemptions, and litigation options and strategies." This is consistent with the public comment letters received by the commissioner acknowledging that many Connecticut attorneys frequently assist their clients in negotiating mortgage, consumer, and other forms of debt in the context of providing quintessential legal services such as advice as to the enforceability of debts, defense of collection suits, and representation in bankruptcy proceedings. See also New York City Bar Report, supra, p. at 77 ("[f]or many practitioners, legitimate debt settlement negotiation comprises a part of their bona fide practice of law through which clients resolve debt issues"). The plaintiff's representations, if true, thus indicate that the debt negotiation services that it provides are inseparably bound together with giving legal advice as to the transfer of property interests, preparing and evaluating related documents, and assisting with potential litigation arising from such transactions. See Practice Book § 2–44A(a)(5).

Third, the plaintiff represents that "[i]If litigation develops, the assigned Connecticut attorney assists the client in preparing answers to complaints and arbitration demands, drafts responses to discovery (if applicable), drafts cease and desist letters to creditors, and, when appropriate, helps the client assert claims against ***676** creditors who violate the law on collection practices. For an additional fee, the [plaintiff] also offers to provide bankruptcy consultations to those clients who cannot settle their debts outside of bankruptcy." Although it is not entirely clear from the complaint, it appears, based on these representations, that the plaintiff also may draft legal documents or agreements for its debt settlement clients; see Practice Book § 2–44A(a)(3); and represent those clients in court or in other formal dispute resolution processes. See Practice Book § 2–44A(a)(4). At the very least, such services would appear to qualify as "other act[s] ****606** which may indicate an occurrence of the authorized practice of law...." Practice Book § 2–44A(a)(6).

The plaintiff further represents that, under its business plan, all of these legal services are provided either directly by Connecticut attorneys or by paralegals and other support staff under the direct supervision and control of Connecticut attorneys. Accordingly, taking the allegations in the complaint as true, as we must, we are compelled to conclude that the debt negotiation services that the plaintiff provides are inextricably bound together with the practice of law by licensed Connecticut attorneys. See, e.g., *Kowaleski v. Rabel,* Statewide Grievance Committee, Opinion No. 13–0267 (April 17, 2014) (concluding that Pennsylvania attorney who assisted Connecticut resident in debt modification and reworking of mortgage engaged in unauthorized practice of law). Accordingly, their regulation falls under the exclusive authority of the Judicial Branch. In their current form, the debt negotiation statutes therefore offend the separation of powers provision of article second of the state constitution and are unenforceable with respect to Connecticut attorneys engaged in the bona fide practice of law. [8]

***677** Two points bear further discussion. First, we consider the commissioner's argument that debt negotiation services cannot constitute the practice of law because such services legally may be provided by nonattorneys without running afoul of General Statutes § 51–88, which prohibits the practice of law by persons not admitted as attorneys. The trial court found this argument persuasive, as have certain of our sister courts. See, e.g., *Erwin & Erwin v. Bronson,* 117 Or.App. 443, 446–47, 844 P.2d 269 (1992), review denied, 317 Or. 271, 858 P.2d 1313 (1993). We, however, do not.

Even if we were to assume that the commissioner's premise is true, and that nonattorneys may legally provide basic debt negotiation services in Connecticut without violating § 51–88, the conclusion does not follow that such services do not constitute the practice of law when performed *by Connecticut attorneys within the context of an attorney-client relationship.* Rather, it is well established that there are a number of services that may legally be provided by laypeople but, when performed by attorneys, constitute the practice of law. Practice Book § 2–44A, for example, contains an "[e]xceptions" section, which lists a dozen activities that are permitted to be performed by any person "[w]hether or not [they constitute] the practice of law...." Practice Book § 2–44A(b). Those activities include but are not limited to: acting as an authorized *678 representative before administrative agencies or in administrative hearings; Practice Book § 2–44A(b)(2); "[s]erving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator"; Practice Book § 2–44A(b)(3); "[p]articipating in labor **607 negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements"; Practice Book § 2–44A(b)(4); "[a]cting as a legislative lobbyist"; Practice Book § 2–44A(b)(6); "[p]erforming statutorily authorized services as a real estate agent or broker licensed by the state of Connecticut"; Practice Book § 2–44A(b)(9); and "[p]reparing tax returns...." Practice Book § 2–44A(b)(10). Section 2–44A therefore implicitly recognizes that these activities, although permissible for nonattorneys, may constitute the practice of law when performed by attorneys in the context of an attorney-client relationship. Indeed, some of these practices are "commonly understood to be the practice of law"; *Statewide Grievance Committee v. Patton,* 239 Conn. 251, 254, 683 A.2d 1359 (1996); and were traditionally considered to be quintessentially legal services.

[8] The official commentary to rule 5.5(c)(4) of the Rules of Professional Conduct likewise recognizes the existence of "services that nonlawyers may perform but that are considered the practice of law when performed by lawyers." See also *In re Darlene C.,* 247 Conn. 1, 16, 717 A.2d 1242 (1998) (*Borden, J.,* concurring) (activities such as filing papers in court may constitute practice of law when performed by attorneys but not when permissibly performed by laypeople). Accordingly, the fact that laypeople legally may perform debt negotiation services does not mean that such services do not constitute the practice of law when engaged in by a Connecticut attorney in the context of an attorney-client relationship.[9]

*679 Second, we hasten to emphasize that our conclusion that the commissioner lacks the constitutional authority to license and regulate the provision of debt negotiation services as characterized by the plaintiff is predicated on the plaintiff's representation that its employees and affiliates provide such services to Connecticut residents only (1) under the direct supervision and control of licensed Connecticut attorneys, pursuant to rules 5.3 and 5.5 of the Rules of Professional Conduct, and (2) only in conjunction with the bona fide practice of law. If the commissioner were to determine, however, that, in a particular case, the plaintiff or another debt negotiation company was merely using Connecticut attorneys as a front or facade to circumvent the debt negotiation statutes, then there would be no separation of powers problem and the commissioner would not be barred from exercising his full statutory authority. The plaintiff itself appears to concede this point, and our sister courts have concluded likewise. See, e.g., *In re Kinderknecht,* supra, 470 B.R. at 172; see also New York City Bar Report, supra, p. 3 ("[t]o the extent attorneys engaged in these enterprises are not acting as attorneys, their conduct would fall outside the scope of the Rules of Professional Conduct and should therefore be included in the statutory scheme").

[9] Although the separation of powers provision of the state constitution requires **608 that the commissioner presume, for the purposes of § 36a–671c, that a Connecticut attorney who purports to provide debt negotiation services *680 within the context of an attorney-client relationship is actually engaged in the practice of law, that presumption may be overcome where, for example, the commissioner determines that the Connecticut attorney has failed to (1) exercise meaningful oversight over debt negotiation staff, (2) provide any genuine legal advice or other legal services, and/or (3) maintain a bona fide attorney-client relationship with the client. In such cases, the person or persons providing debt negotiation services would not qualify for the attorney exemption.

Finally, we note that the Office of Chief Disciplinary Counsel is well aware of its duty to regulate lawyers when they are acting as debt negotiators, and we trust that it will continue to monitor vigilantly their activities and fees in this area of practice. We expect that that office, if asked to pass upon the fees charged by the plaintiff or other debt negotiation companies, will take the statutory fee cap and the commissioner's maximum fee schedule into consideration in determining whether the fees charged are reasonable. We

likewise trust that Connecticut attorneys, both newly admitted and experienced, will remain mindful of the potential ethical pitfalls they may encounter in this area of practice.

The judgment is reversed and the case is remanded to the trial court with direction to render judgment sustaining the plaintiff's appeal.

In this opinion the other justices concurred.

**All Citations**

318 Conn. 652, 122 A.3d 592

Footnotes

1 The debt negotiation statutes were amended since the plaintiff initiated this declaratory judgment action in 2012; see, e.g., Public Acts 2014, Nos. 14–7, 14–89 and 14–122; however, the changes are not relevant to this appeal. For the sake of convenience and clarity, we refer to the current revision of the statutes.

2 The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51–199(c) and Practice Book § 65–1.

3 Article second of the constitution of Connecticut, as amended by article eighteen of the amendments, provides in relevant part: "The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another...."

4 Pursuant to this authority, the commissioner has established a schedule of maximum debt negotiation fees. See Connecticut Dept. of Banking, "Debt Negotiation: Schedule of Maximum Fees," (last modified September 28, 2009), available at http://www.ct.gov/dob/cwp/view.asp?a=2232&q=447776 (last visited August 27, 2015). The schedule provides, among other things, that: (1) an initial debt negotiation set-up fee may not exceed $50; (2) a monthly service fee may not exceed $8 per creditor and $40 total; and (3) total aggregate fees may not exceed 10 percent of the amount by which a consumer's debt is reduced as part of each settlement. Id.

5 See Association of the Bar of the City of New York, "Profiteering from Financial Distress: An Examination of the Debt Settlement Industry" (May 2012) Appendix E, pp. 171–84 (New York City Bar Report) (chart depicting current state regulations).

6 The commissioner did not determine either (1) whether the plaintiff's business model for providing debt negotiation and related services would qualify for the attorney exemption under the commissioner's "primary purpose" test, or (2) whether § 36a–671c violated the separation of powers provisions of the state constitution.

7 Ordinarily, it is the practice of this court to resolve all of an appellant's statutory and administrative claims before considering any constitutional challenges. We have made exception to that rule, however, when "sufficient public interest warrants such a review"; *State v. DellaCamera,* 166 Conn. 557, 561, 353 A.2d 750 (1974); and when the appellant's constitutional challenge is clearly meritorious. See, e.g., *Leydon v. Greenwich,* 257 Conn. 318, 333 n. 20, 777 A.2d 552 (2001) (concluding that challenged ordinance violated federal and state constitutional rights to engage in protected expressive and associational activities, rather than addressing merits of Appellate Court's determination that ordinance violated state common-law doctrine governing municipal parks). We conclude that both conditions are satisfied here, and we therefore resolve this appeal on the constitutional issue. Cf. *Heiberger v. Clark,* 148 Conn. 177, 184, 191, 169 A.2d 652 (1961) (reaching question whether statute that abridged qualifications for admission to Connecticut bar for attorneys admitted to practice in other states violated separation of powers, despite procedural defects in appeal, because matter was one of great public importance).

8 The commissioner has directed our attention to several cases in which sister courts considering similar challenges have reached contrary conclusions. See, e.g., *Brown v. Consumer Law Associates, LLC,* 283 F.R.D. 602, 609 (E.D.Wash.2012); *Hays v. Ruther,* 298 Kan. 402, 411, 313 P.3d 782 (2013); *Eric M. Berman, P.C. v. New York,* 2015 N.Y. Slip Op. 05594, 25 N.Y.3d 684, 37 N.E.3d 82 (2015). Those cases are factually distinguishable, however, or employ reasoning with which we disagree. For example, the New York Court of Appeals relied on the fact that the debt collection practices at issue did *not* constitute the practice of law and, in fact, the local law itself "clearly states that it does not pertain to attorneys who are engaged in the practice of law on behalf of a particular client." *Eric M. Berman, P.C. v. New York,* supra, at 597, 37 N.E.3d 82. In the present case, by contrast, we have concluded that debt negotiation, as characterized by the plaintiff, does constitute the practice of law when performed by an attorney.

9 The commissioner's reliance on *Bysiewicz v. Dinardo*, 298 Conn. 748, 6 A.3d 726 (2010), is misplaced. In that case we addressed the inverse question, namely, whether the mere fact that an attorney engages in certain conduct thereby renders it the practice of law. In concluding that conduct in which an attorney engages outside the context of an attorney-client relationship does not constitute the practice of law, we did not address the issue of whether an attorney may, as part of the practice of law, engage in conduct that would not qualify as the practice of law if performed by a layperson. Indeed, in *Bysiewicz*, we observed that nonattorneys historically were permitted to engage in various conduct that was "commonly understood to be the practice of law" when performed by attorneys. (Internal quotation marks omitted.) Id., at 768, 6 A.3d 726.

**End of Document**

# Exhibit 6

31 Mass.L.Rptr. 329
Superior Court of Massachusetts,
Suffolk County.

Robert E. GIBBONS, Ann K. Lambert, Pamela H. Wilmot, Lael E.H. Chester, Richard C. Lord, Susan Reid, and a class of similarly situated persons, Plaintiffs,
v.
William F. GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts and Marie Marra, in her official capacity as Supervisor of Lobbyist Registration, Defendants.

Civil Action No. 12–3278.
|
Feb. 4, 2013.

## *MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS*

JANET L. SANDERS, Justice.

***1** This case by a group of state lobbyists challenges the defendants' application of the state lobbying statute and raises the question of what that statute means in requiring the lobbyists to disclose their "direct business associations" with public officials. The matter is now before the Court on the defendants' Motion for Judgment on the Pleadings. Plaintiffs not only oppose that motion but seek judgment in their favor on Count I of the Complaint, which seeks a declaration that the defendants' conduct is not in accordance with the statute and is therefore invalid. For reasons set forth below, this Court concludes that the plaintiffs are entitled to judgment in their favor.

### *BACKGROUND*

The facts necessary to resolve this motion are not disputed. The plaintiffs are all "legislative agents" and/or "executive agents" as defined by G.l.c. 3 § 39. Accordingly, they are required to file an annual registration statement with the Secretary for the Commonwealth of Massachusetts (the Secretary) on forms "prescribed and provided by" him. G.L.c. 3 § 41. Every six months—in July and January of each year—these same individuals are required to file with the Secretary an itemized statement containing that information outlined in G.L.c.3 § 43 (Section 43). The interpretation of Section 43—specifically the third paragraph—is what is at issue in this case.

As originally written, that paragraph required every lobbyist to provide a list of all bill numbers that he or she acted to "promote, oppose or influence" during the six month reporting period. That paragraph was rewritten and substantially expanded by Ethics Reform Law, St.2009 c. 28 § 8 to require that the lobbyist provide the following additional information:

> (1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers and names of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent's position, if any, on each such bill or governmental action; (5) the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services; and (6) *all direct business associations with public officials.* The disclosure shall be required regardless of whether the legislative agent or executive agent specifically referenced the bill number or name, or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

(Emphasis added.) This amendment was made following the issuance of a Report and Recommendations by the Governor's Task Force on Public Integrity which called for enhanced disclosure requirements. That Report, dated January 6, 2009, is referenced in the Complaint and is attached to plaintiffs' Memorandum. [1]

The amendment took effect January 1, 2010. For the next five reporting periods, the Secretary utilized a form containing a box that required the executive or legislative agent to disclose, among other things, his or her "direct business association

with public official." For each reporting period, the named plaintiffs entered "None" or "N/A" indicating that they had no business association with a public official. They received no indication from the defendants or the division of the Secretary's office charged with reviewing these statements (the "Lobbying Division") that their disclosure statements were incomplete or in need of correction.

*2 Beginning in July 2012, however, each of the plaintiffs received an email notice from the Lobbying Division informing them that their response of "None" or "N/A" would not be correct if they had any "communications" with any public official or legislator. As one message explained:

> The Chief Legal Counsel has reviewed M.G.L.c. 3 § 43 and determined that, in context, the reference to business would be a reference to the "lobbying business" and therefore the question is what direct lobbying associations occurred during the disclosure period. There is no indication that the legislature in enacting section 43 had concerns about business associations independent of lobbying activities."

¶ 33 of Complaint (quoting email to plaintiff Gibbons). Similar emails were sent to other registered lobbyists. See e.g. ¶ 34 of Complaint (informing plaintiff Lambert that: "Where your business is lobbying, the law requires disclosure of the public officials lobbied"); ¶¶ 35, 36 of Complaint (emails instructing plaintiffs Wilmot and Chester that they "must provide names of all public officials communicated with"); ¶ 38(e) of Complaint (email to plaintiff Reid advising him that: "in the business section box, you are required to report the name of the public official or legislator with whom you communicated with [sic] for each lobbying activity"). In other words, Section 43 requires, according to the Secretary, that all registered lobbyists list every public official with whom they have had any *communication* about a bill or other governmental action during the six month reporting period, even though they have no relationship with the public officials beyond the lobbying activity.

## *DISCUSSION*

The question before the Court is one of statutory interpretation. "The object of all statutory construction is to ascertain the true intent of the legislature," with the court examining the words actually used as well as the circumstances under which the statute was enacted. As the SJC has put it, statutes "are to be interpreted not alone according to their simple, literal or strict verbal meaning, but in connection with their development, their progression through the legislative body, the history of the times [and] prior legislation." *Sullivan v. CJAM,* 448 Mass. 15, 24 (2006), quoting *Murphy v. Bohn,* 377 Mass. 544, 579 (1979). The words are to be given their ordinary and common meaning, "considered in the context of the objectives which the law seeks to fulfill." *Int'l Org. of Masters, etc. v. Woods Hole v. Martha's Vineyard & Nantucket S.S.Auth.,* 392 Mass. 811, 813 (1984). Applying these principles to the issue before me, this Court concludes that both the language of Section 43 as well as the circumstances which led to the amendment at issue support the plaintiffs' position as to its meaning.

The pertinent language of Section 43 requires lobbyists to disclose "all direct business associations with public officials." The statute does not define what constitutes a "business association." Therefore, this Court assumes that the legislature intended that the words be given their ordinary and common usage. Although there is no strict dictionary definition for the phrase itself, the word "association" has been defined as "a group of people organized for a joint purpose" or a" connection or cooperative link between people or organizations." Oxford online dictionaries, http://oxfordd ictionaries.com/definition/american_english/association. Accordingly, a "business association" would denote a joint enterprise or transaction between one or more individuals of a financial or commercial nature. It is *not* commonly understood to be an event as transient as a "communication" from one person to another, which is the meaning that the Secretary appears to ascribe to the term.

*3 The defendants argue, however, that G.L.c. 3 § 39 provides the definitions that should be followed in interpreting Section 43. Section 39 defines a "legislative agent" as any person who "for compensation or reward engaged in legislative lobbying, which includes at least 1 lobbying *communication* with a government employee made by said person." (Emphasis added). "Legislative Lobbying" also includes "strategizing, planning and research if performed in connection with or for use in an actual *communication* with a government employee." (Emphasis added). The *sine qua non* of the lobbyist's business is therefore that he or she is engaging in "communications" with government officials. Consequently (the defendants argue), because the plaintiffs are necessarily engaging

in the "business" of lobbying when they communicate with government officials for the purpose of influencing legislation, Section 43's reference to "business associations" means that all registered lobbyists must identify those government officials with whom they communicated.

To put it bluntly, this argument makes absolutely no sense. As the plaintiffs point out in their memorandum at p. 8, Section 39's definition regarding who is deemed to be a legislative agent engaged in the business of legislative lobbying has no logical or textual bearing on what that same agent must report under Section 43. Section 39's definitions are important to determine who must register with the Secretary. They have nothing to do with the disclosure obligations set forth in Section 43. Thus, for example, Section 39 defines lobbying broadly to include strategizing, planning and research. But that broad definition does not mean that Section 43 requires a lobbyist to disclose such plans or strategies. Conversely, Section 43 requires a lobbyist to disclose certain campaign contribution and expenditures, but such expenditures have nothing to do with the definitions of "legislative agent" or "legislative lobbying."

Indeed, section 39 does not define "business associations" at all. Instead, defendants lift certain words from that section and then, in a mangled use of the English language, maintain that Section 43 means that the lobbyist and government official are necessarily engaged in business together whenever the lobbyist communicates with that official in an attempt to influence legislation. As the defendants concede, however, to enter into an "association" with another means to join or unite together for some common purpose. Clearly, the government official on the receiving end of a communication by a lobbyist does not thereby agree to unite with that lobbyist either to accomplish the end sought by the lobbyist or to assist him in his lobbying business. In short, if the legislature had meant a lobbyist to disclose all *communications* to a government official regardless of whether the two had any separate business relationship, then it would have said so.

***4** The plaintiffs' position is only strengthened when this Court considers what led up to the amendment to Section 43. In 2008, Governor Deval Patrick appointed a bipartisan task force charged with making specific recommendations to improve the ethics and lobbying laws.[2] It was organized in the wake of news reports of misconduct by certain government officials, particularly in their dealings with persons who had some stake in pending legislation. See Report, p. 1 (alluding to "recent highly publicized reports of transgressions"). One of the most prominent cases was that of then Speaker of the House Salvador DiMasi, who was alleged to have had personal and business relationships with lobbyist Richard Vitale at a time when Vitale was seeking to influence legislation regarding ticket resales. The Task Force studied laws in other states which required lobbyists to disclose their business relationships with government officials and suggested that Massachusetts' laws be amended to require the same kind of disclosure in order to provide "greater transparency and accountability." See Report at pp. 21–22.[3] Its specific recommendations included a proposed amendment to Section 43 that would require lobbyists to disclose "any direct business relationships with public officials." Clearly, the "evil" that the recommendation sought to eradicate was the danger that a lobbyist and government official could be involved in a separate commercial or financial transaction, unknown to the public, that could make that official more susceptible to being influenced by the lobbyist.

Certainly, the Secretary's reading of Section 43 does not address the problem that the Task force sought to eliminate. Indeed, it would appear to negate the salutary effect of the legislation that was adopted in the wake of the Task Force's recommendation. By requiring a lobbyist to disclosure all communications with a government officials, the law would do nothing to bring sunlight into those darkened recesses of the lobbyist/government official relationship which had been the breeding grounds for trouble. Financial and commercial relationships between lobbyist and government official that could create a conflict of interest would continue to remain hidden from public view.

Perhaps the most interesting chapter in this legislative background story is that described by the plaintiffs on pp. 15–16 of their Memorandum. The Governor filed a bill seeking changes in the lobbying law in line with the Report's recommendations. As that bill was progressing through the legislative process, Senator Eldridge filed a bill, S.1415, on the petition of the defendant, Secretary Galvin. Section 12 of this bill proposed that Section 43 be replaced with a new provision that required a lobbyist to file disclosure statements that included "the names of the persons, organizations, legislative bodies or committees before which he has lobbied." This proposal was sent to a study committee and died there. Apparently, the Secretary now seeks to accomplish by administrative fiat that which he was unable to achieve through the legislative process. This he cannot do.

*CONCLUSION AND ORDER*

*5 For all the foregoing reasons and for other reasons set forth in the plaintiffs' comprehensive Memorandum of Law, the defendants' Motion for Judgment on the Pleadings is ***DENIED.*** The plaintiffs' request that that judgment enter in their favor as to Count I of the Complaint is hereby ***ALLOWED.*** Because this may render the remaining counts moot, this Court requests that plaintiffs promptly filed a proposed form of judgment pursuant to Rule 9A.

**All Citations**

Not Reported in N.E.2d, 31 Mass.L.Rptr. 329, 2013 WL 4017327

Footnotes

1 This Court may take judicial notice of official government reports, see e.g. *Commonwealth v. Florence F.*, 429 Mass. 523, 529 (1999) and may consider the Task Force Report in ruling on the instant motion, particularly since it is referenced in the Complaint and the defendants do not deny its existence. See *Jarocz v. Palmer*, 49 Mass.App.Ct. 834, 836 (2000).

2 One of the members of the Task Force was the named plaintiff Pamela Wilmot. Other members included four legislators, businessmen, lawyers, and a law professor.

3 Footnote 67 of the Report cites statutes from four other states to illustrate what the Task Force had in mind. Each of those statutes use language which requires disclosure of relationships and transactions that are commercial or financial in nature.