Appendix 1

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APPENDIX 2

List of the Committees and their Members and Advisors
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Allan Rodgers  
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Juvenile

William J. Leahy, Co-Chair  
Committee for Public Counsel Services
APPENDIX 3

“Observations on the Right to Counsel in Civil Cases in Massachusetts”

By Allan Rodgers
Massachusetts Law Reform Institute
April 5, 2004
April 5, 2004

Observations on the Right to Legal Counsel in Civil Cases in Massachusetts
(prepared by Allan Rodgers)

I start with a catalogue of those civil cases in which legal counsel is required under current law, and then identify those categories of cases where litigants risk substantial loss of rights and where legal counsel is not now required.

1) **Civil Cases In Which Appointment and State Payment of Legal Counsel is Required**

   a) Care and protection cases - c.119, §29 (both for a child and for a parent, guardian or custodian of the child).

   b) Child guardianship cases - (c.119, §29 cross-references to c.201, §§5 and 14.)

   c) Children in need of services - c.119, §39F - for the child.

   d) Waiver of consent to adoption - c.210, §3(b) - for the child.


   e) Mental health commitments - c.123, §5

   f) Substitute judgment cases (Rogers) and other involuntary treatment, such as court-ordered anti-psychotic medication. c.123, §5; c.201, §6(c), §6A(c).

   g) Adjudication as a sexually dangerous person. c.123A, §13(c).

   h) Commitment by a court to a tuberculosis hospital. c.111, §94(1).

   i) Petition by the Disabled Persons Protection Commission, DMH or DPH to order the provision of protective services to someone who lacks the capacity to consent to these services. c.19C, §7(a).
g) Civil debt collection cases which may involve serious sanctions against
a defendant.

h) Obtaining relief from or sealing criminal records, unless CPCS is
willing to provide representation.

i) Immigration law consequences such as detention and deportation. If a
state chooses to provide and pay for legal counsel for immigration law cases, it is likely that the
state could successfully do so in the face of the primary federal role in immigration law.

3) Other Resources to Substitute or Supplement Legal Representation by
Counsel - Any discussion of the provision of legal counsel in civil cases should include viable
alternatives that will either provide direct assistance in the resolution of civil matters without the
necessity to resort to a court decision or will provide other representation or help which is
adequate to protect a litigant's rights. Here are some of these alternatives.

a) Non-lawyer representation in court proceedings - Trained non-lawyers,
supervised by lawyers, can provide competent representation in court hearings in a variety of
cases. Examples are uncontested divorces and other uncontested family law matters; some
housing cases; and appeals in public benefits termination cases. For many years we have had
many examples of this kind of representation, but in agency administrative adjudicatory hearings.
Examples are cash assistance, food stamps and health benefit appeals and unemployment
hearings. Many of these hearings involve the termination or denial of essential benefits.

b) Screening, brief assistance and dispute resolution systems can, if
adequate resources are available to assist needy unrepresented litigants, result in settlements or
adjustments of disputes so that they need not go to court. We have the beginnings of these
systems in the various Lawyers-for-the-Day programs in Probate and Family and Housing Courts
and legal services programs provide clinics and back-up help in some categories of cases where
the results have generally not been less favorable than if the litigants were provided with
attorneys. Another example is the Tenancy Preservation Project, which provides pre-court
hearing help in the Western Mass. and Boston Housing Courts to disabled tenants who are
defendants in eviction cases. Some believe that this kind of program can be expanded to other
eviction cases involving vulnerable tenants.
APPENDIX 4

MEMORANDUM BY MINTZ LEVIN
(FROM POONAM PATIDAR TO SUSAN M. FINEGAN)

DATED 1/22/08 ON THE FULL LIST OF KNOWN CIVIL CASES IN WHICH APPOINTMENT AND STATE PAYMENT OF LEGAL COUNSEL IS REQUIRED, ADDENDUM TO ALLAN RODGERS MEMORANDUM ON OBSERVATIONS ON THE RIGHT TO COUNSEL IN CIVIL CASES

APRIL 5, 2004
MEMORANDUM

TO: Susan M. Finegan
FROM: Poonam Patidar
DATE: May 22, 2008
RE: BBA Task Force on Civil Right to Counsel

This memorandum serves as an addendum to the memorandum circulated on April 5, 2004 by Allan Rodgers. The two items that appear in bold are additions to the previous memorandum.

In the Commonwealth of Massachusetts, courts are required to appoint legal counsel in the following civil cases:

1. Care and protection cases. A right to counsel for the child and the parent, guardian or custodian of the child exists in all petitions, hearings and appeals regarding the commitment of such child to the custody of the Department of Social Services, foster care or a qualified person. Mass. Gen. Laws ch.119, §29 (2007).

2. Child guardianship. Although it was asserted that no right to counsel exists for child guardianship cases, under section 29 of chapter 119 of the General Laws of Massachusetts, a parent, guardian or custodian has the right to counsel during any child custody proceeding in which the Department of Social Services or a licensed child placement agency is a party, including proceedings in which a guardian is appointed for the minor; a temporary guardian is appointed for emergency purposes; or there is court-ordered medical treatment. ch.119, §29; ch.201, §§5, 14. See Balboni v. Balboni, 39 Mass.App.Ct. 210 (1995). However, this right does not extend to custody proceedings in a divorce action, or proceedings not involving termination of parental rights. See In re Adoption of Estaban, 66 Mass.App.Ct. 1107 (2006).

3. Children in need of services. A child has a right to counsel during petitions and hearings in which a juvenile court is asked to determine whether the child is a child in need of services. A child in need of services is (i) a child under the age of seventeen who persistently runs away from the home of his or her parents or legal guardian or persistently refuses to obey the lawful and reasonable commands of his or her parent or legal guardian thereby resulting in the parent’s or guardian’s inability to care for and protect such child; or (ii) a child between the ages of six and sixteen who persistently and willfully fails to attend school or violates the lawful and reasonable regulations of his or her school. ch.119, §§ 21, 39F.
January 22, 2008

4. Waiver of consent to adoption. A child has a right to counsel in a petition for adoption if such petition is contested by any party. ch.210, §3. In addition, the Supreme Judicial Court in Department of Public Welfare v. J.K.B., 379 Mass. 1 (1979), recognized a parent’s constitutional right to counsel in cases involving the termination of parental rights.

5. Mental health commitments. An indigent person has the right to counsel in any hearing to commit or retain such person to a mental health facility or for medical treatment, including antipsychotic medication. ch.123, §5.

6. Substitute judgment cases and other involuntary treatment, such as court-ordered anti-psychotic medication. A person has the right to counsel at any hearing to admit or commit such person to a mental health facility or a mental retardation facility; or to authorize treatment of such mentally ill or mentally retarded person with antipsychotic medication. Furthermore, a mentally retarded person has the right to counsel at an adjudicatory hearing regarding to the transfer of such person from one residential facility to another. ch.123, §5; ch.123B, §3; ch. 201, §§6, 6A, 14.

7. Adjudication and classification as a sexually dangerous person. In proceedings to declare a person a sexually dangerous person and to temporarily commit the person, such person has the right to counsel. This right to counsel extends to any subsequent hearings and trials. A person who is adjudicated a sexual offender is also entitled to counsel during a hearing to challenge such person’s sex offender classification and duty to register prior to release or parole from custody. ch.6, §178L; ch.123a, §12-14. See Commonwealth v. Nicholls, 68 Mass.App.Ct. 1120 (2007).

8. Involuntary commitment to tuberculosis hospital. ch.111, §94C.

9. Petition by the Department of Elderly Affairs to order the provision of protective services to someone who lacks the capacity to consent to these services. ch.19A, §20(a).

10. Petition by the Disabled Persons Protection Commission, DMH or DPH to order the provision of protective services to someone who lacks the capacity to consent to these services. ch.19C, §7.

11. Petition by a women of less than eighteen years of age to obtain an abortion without the consent of her parents. ch.112, §12S. See In the Matter of Mary MOE. 26 Mass.App.Ct. 915 (1988).

12. Other Matters:

a. Criminal contempt for a violation of a civil court order in the Probate and Family Court or Housing Court. ch.211D, §6(b)(ii).

b. Any other matter in the Probate and Family Court or Housing Court in which the person is entitled to counsel. ch.211D, §6(b)(i).
January 22, 2008

c. Any other civil matter for which the Chief Counsel of CPCS determines that the appointment of a legal counsel is necessary. ch.211D, §6(b)(iii).

In Massachusetts, a civil right to counsel is provided to a person in circumstances where the state, a state agency, or a third party petitions the court to take some action involving or adverse to such person. Because the action is brought either against or relating to the person, there has been no discussion of the merits of the claim. The only exception is the case in which an unwed woman under the age of eighteen seeks judicial consent to an abortion in lieu of parental consent.
Appendix 5a

Housing Committee Appendices

Survey of housing court judges, pro bono lawyers for the day, legal services, lawyers and landlord attorneys
The Boston Bar Association (BBA) Task Force on Expanding the 
Right to Counsel in Civil Cases

Survey for Housing Court Judges and Court Personnel

The American Bar Association adopted a resolution calling for the appointment of counsel for persons of low income in civil matters where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. The Boston Bar Association President Tony Doniger has appointed a Task Force to find practical ways to explore expanding the right to counsel. The Task Force, which includes representatives from the Massachusetts Bar Association, the Access to Justice Commission, and the Women’s Bar Association, among other organizations, is interested in your opinion on the types of cases where counsel are most needed for a just outcome.

As we assume parties generally would benefit from counsel, the challenge is to identify the greatest need in light of the ABA mission. Given your daily experiences, we want to benefit from your vantage point within the court system. Because the goal of this survey is to encourage brainstorming, we ask you not to focus at the moment on the resources that might be necessary to provide counsel for the types of cases you propose. We are at this stage simply trying to identify where counsel is most needed. The following is a partial list of categories for your consideration by which summary process cases could be targeted for counsel:

1) **Features of the parties**, e.g., mental/physical disability; cultural and/or language barriers; age (e.g. elderly, or cases involving minor children)

2) **What is at stake**, e.g., “for cause” evictions where subsidized housing is at risk; “for cause” evictions for criminal activity under G.L. c. 139 § 19 or c. 239 (fast-track and/or with implications for a related criminal process)

3) **Forum**, e.g., mediation; District Court v. Housing Court; jury claim

4) **Features of the claim**, e.g., non-payment of rent cases; “no fault” cases involving long-term tenancies; cases involving substantial counterclaims

**Your answers will remain CONFIDENTIAL. Thank you for your help.**
BBA Task Force on Expanding the Right to Counsel in Civil Cases

SURVEY FOR HOUSING COURT JUDGES AND COURT PERSONNEL.

Name: [Optional] ________________________________ Date: __________________

Position: ________________________________ Court: [Optional] ________________________________

I. Most important Scenarios for Availability of Counsel:

1. In light of the ABA mission statement, which types of cases are most compelling in your opinion for legal representation? List up to three:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2. Why did you choose these particular cases?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

3. How might we identify the particular cases you propose [i.e. this might be relatively easy if, for example, the trigger is that a tenant is elderly, or living in certain types of housing, but more difficult to do in other situations].

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

4. Do you have a rough estimate as to the volume of cases that would be involved (by # of cases or overall percentage), at least in your court, for the scenarios you propose?

________________________________________________________________________

5. Do you have any additional comments? Thank you
Contact Information (Optional)
Appendix 5 B

Housing Committee Appendices

Questionnaire and summary of results circulated by the Committee to a larger group after the initial proposals were developed
Draft Proposal: Pilot Project for A Right to Counsel in Certain Eviction Cases

The American Bar Association (ABA), Boston Bar Association (BBA) and Massachusetts Bar Association (MBA) have adopted resolutions calling for the appointment of counsel for persons of low income in civil matters where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. After obtaining input from judges and others working in the courts, lawyers, and advocates, the Housing Subcommittee of BBA Task Force on Expanding the Right to Counsel in Civil Cases has formulated the following draft proposal for pilot projects in eviction cases.

We have tried to balance the need to respond to the broad array of cases in which litigants would benefit from counsel, as identified in the survey responses, with the need to identify a narrow enough subset of cases to increase the chances of successful implementation. Because the initial focus is on identifying eligible clients or cases, we are not focusing here on implementation questions, such as delivery mechanisms, funding, or the initial settings for the pilot projects.

We welcome your feedback in general, with a particular emphasis on the following questions:

1. In the court(s) in which you practice or work, what is your best estimate of the number of cases (or percentage of the docket) that would fall into each category of the proposal?

2. Would you recommend eliminating any of the listed categories and, if so, which one(s) and why?

3. If there is a different, discrete subset of eviction cases that is more important than those listed in the draft proposal, please describe the type of case and explain why you feel it is more important?

Thank you. Please feel to your feedback for us by contacting me in whatever manner is easiest for you.

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Draft Proposal: Pilot Project for A Right to Counsel in Certain Eviction Cases

I. Representation Proposal

A. Legal counsel shall be provided for indigent tenants in the following eviction cases:

1) Cases involving household members with mental disabilities where the disability is directly related to the reason for eviction; or
2) Cases involving criminal conduct (including cases brought pursuant to M.G.L. c. 139, sec. 19 and those brought as summary process cases); or
3) Cases in which, in the discretion of the judge, the absence of representation for the tenant will lead to a substantial denial of justice. In the exercise of judicial discretion, judges shall consider the following factors:
   a. Factors relating to a tenant's vulnerability, such as disability, domestic violence, education, language, culture or age;
   b. Factors relating to the landlord, such as whether the landlord controls a large or small number of units, whether the landlord is legally sophisticated, whether the landlord is represented by counsel, and whether the landlord lives in the building;
   c. The affordability of the unit for the tenant, including whether the unit is in public or subsidized housing;
   d. Whether there appear to be cognizable defenses or counterclaims in the proceeding;
   e. Whether the loss of shelter might jeopardize other basic needs of the tenant, such as safety, sustenance, health or child custody;
   f. Other indicia of power imbalances between the parties.

B. Legal counsel shall be provided for indigent landlords where:
1) The landlord resides in the building that is the subject of the eviction proceeding;
2) The landlord owns no other interest in real property;
3) The tenant is represented by counsel; and
4) The landlord's shelter is at stake in the proceeding.

II. Proposals complementing the Representation Proposal

We will further recommend that the proposal above be supplemented with the expansion of assistance programs, such as lawyer of the day programs for both tenants and landlords in all Housing and District Courts, to reach all eligible litigants seeking assistance.
APPENDIX 5 C

HOUSING COMMITTEE APPENDICES

HOUSING COMMITTEE PROPOSAL
Draft Proposal: Pilot Project for A Right to Counsel in Certain Eviction Cases

I. Representation Proposal
   A. Legal counsel shall be provided for indigent tenants in the following eviction cases:

      1) Cases involving household members with mental disabilities where the disability is directly related to the reason for eviction; or
      2) Cases involving criminal conduct (including cases brought pursuant to M.G.L. c. 139, sec. 19 and those brought as summary process cases); or
      3) Cases in which the absence of representation for the tenant will lead to a substantial denial of justice. In the exercise of judicial discretion, judges shall consider the following factors:
         a. Factors relating to a tenant’s vulnerability, such as disability, domestic violence, education, language, culture or age;
         b. Factors relating to the landlord, such as whether the landlord controls a large or small number of units, whether the landlord is legally sophisticated, whether the landlord is represented by counsel, and whether the landlord lives in the building;
         c. The affordability of the unit for the tenant, including whether the unit is in public or subsidized housing;
         d. Whether there appear to be cognizable defenses or counterclaims in the proceeding;
         e. Whether the loss of shelter might jeopardize other basic needs of the tenant, such as safety, sustenance, health or child custody;
         f. Other indicia of power imbalances between the parties.

   B. Legal counsel shall be provided for indigent landlords where:
      1) The landlord resides in the building that is the subject of the eviction proceeding;
      2) The landlord owns no other interest in real property;
      3) The tenant is represented by counsel; and
      4) The landlord’s shelter is at stake in the proceeding.

II. Proposals complementing the Representation Proposal

We will further recommend that the proposal above be supplemented with the expansion of assistance programs, such as lawyer of the day programs for both tenants and landlords in all Housing and District Courts, to reach all eligible litigants seeking assistance.
Appendix 6 A

Family Law Committee Appendices

Family Law: Civil Contempt: The findings of the Litigation and Research Committee (Legal precedent on right to counsel in civil contempt proceedings)
memorandum

to: Civil Gideon Task Force
from: Kathy Jo Cook, Litigation/Research Subcommittee
date: 7/30/2008
re: Contempt

In Massachusetts, the right to counsel in contempt proceedings turns not on whether there may be a loss of liberty but rather on the nature of the punishment. “A remedy of imprisonment for refusing to do an act until the party performs the act is civil, while imprisonment for a definite term for doing the forbidden act is criminal.” Aroesty v. Cohen, 62 Mass. App Ct. 215 (2004) (emphasis added) (citations omitted).

Massachusetts courts have reasoned that counsel is not required in civil contempt proceedings because a defendant cannot be incarcerated unless the court makes an affirmative determination that the defendant has a “present ability to pay” the contempt judgment. Such a finding has been noted repeatedly to be a “prerequisite to a finding of civil” contempt. Id. at 220. Note that the definition of the “present ability to pay,” as recently expanded by the Appeals Court, does not mean that the defendant is able to “write a check” but rather that he can make ongoing payments toward the amount of the judgment. Poras v. Pauling, 70 Mass. App. Ct. 535, 542 (2007).
Massachusetts appears to be in the minority in permitting an indigent defendant to be incarcerated without having been afforded counsel. A recent court noted that at least in the context of non support, “every federal circuit court of appeals confronting the issue has concluded that the Due Process Clause of the Fourteenth Amendment...requires that an indigent defendant in a nonsupport proceeding may not be incarcerated if he has been denied the assistance of counsel.” Burton v. Hootman, 2007 WL 404359 (Ohio App. 5 Dist., February 5, 2007) citing Sevier v. Turner, 742 F.2d 262 (C.A.6) (1984), Walker v. McLain, 769 F.2d 1181 (C.A.10) (1985), Ridgway v. Baker, 720 F2d 1409 (C.A.5) (1983), Henkel v. Bradshaw, 483 F.2d 1386 (C.A.9) (1973). Of note, in Wilson v. State of New Hampshire, 18 F.3d 40, 41 (1994), the First Circuit, relying on Lassiter v. Department of Social Services, 452 U.S. 18, 26-26 (1981) wherein the Court said that “actual imprisonment” is the “line defining the constitutional right to appointment of counsel,” held that there was no right of counsel in civil contempt proceedings if the proceeding did not actually result in incarceration.

I have not reviewed the Briefs in the two most recent Massachusetts decisions discussing civil contempt, Poras v. Pauling, 70 Mass. App. Ct., 535 (2007) and Aroesty v. Cohen, 62 Mass. App. Ct. 215 (2004), but the decisions do not mention cases in any other state or federal jurisdiction, which may mean that Massachusetts courts have not yet considered the arguments raised in what appears to be the
majority of cases throughout the country. Indeed, there is no language in Poras or Aresty to suggest that the parties raised the importance of counsel in determining if, in fact, the contemnor really has an ability to pay, an analysis that might require an advocate, rather than a simple determination by a judge.

The Supreme Judicial Court has not addressed the question of the right to counsel in contempt proceedings since 1980, when it wrote its decision in Furtado v. Furtado, 380 Mass. 137 (1980). In that case, the Court examined, among other things, whether the defendant was prejudiced by the presentation of a criminal complaint for contempt by a probation officer rather than an attorney. In a somewhat broad discussion on contempt, Justice Wilkins wrote: “There may be, of course, good practical reasons why an attorney should present contempt matters….The legal issues may be complicated, even though the presentation of the basic facts may be relatively simple….” Id. at 148. Although it cannot be said that Furtado stands for the proposition that there may be a right to counsel in civil contempt proceedings, the dicta does support the notion that while appearing to be simple, the question of the “ability to pay” may be complex, and as such, a defendant may not truly hold the keys to his own jail cell.
Appendix 6B

Family Law Committee Appendices

Proposal for Pilot Project regarding Civil Contempt
To: Boston Bar Association Civil Right to Counsel Task Force
From: Family Law Subcommittee
Date: July 14, 2008
Re: Preliminary proposal for Contempt Pilot Project

Introduction:

Since poor defendants in contempt actions are vulnerable to incarceration, this is a class of litigants most likely to be entitled to appointed counsel. The actions have a narrow scope: Whether the defendant deliberately failed to comply with a clear court order.

Need

The number is high, over 22,000 filed statewide in FY 06. In only 9,000 of these was a judgment entered. Approximately 8,000 of the plaintiffs were unrepresented. Online statistics do not indicate the number of unrepresented defendants. It is our understanding that DOR was involved in roughly 5,000, but this number needs to be verified. We expect that a significant proportion of contempts involve non-payment of support. Presumably many of these defendants will assert financial hardship as a defense in the action.

In some instances, there may be no risk of incarceration. For example, if the defendant shows documentation of disability benefits based on economic hardship (Emergency Aid to Elderly Disabled and Children, SSI), a judge may make an initial determination that s/he is prima facie unable to make previously assessed payments and not subject to incarceration. In such cases, an attorney need not be appointed. This may later be revisited, in light of new evidence. District Court judges sometimes make such an assessment at arraignment in smaller criminal matters. In such cases, the defendant in a contempt action does not face the loss of liberty and does not require counsel.
Current Scope of Right to Counsel

At present, it is the practice of some judges to request an attorney who happens to be in the courthouse to serve as counsel for a defendant then present and facing incarceration. Generally the hearing has begun or some dispute intervention has occurred without counsel. In many instances, the attorney, who serves as a volunteer, has an hour or less to assess the case and marshall whatever resources may be available to the defendant. While this may be helpful in certain cases, generally it is poor practice not to communicate with the client before a court appearance, not to prepare the Financial Statement and not to be able to bring evidence to court. In addition, other judges may not often appoint counsel for contempt defendants.

Potential for Expansion

The current practice reying on volunteers may be a useful adjunct to any established project. The current approach could not be fairly thought of as sufficiently systematic, however, to be valuable in designing a more comprehensive response to the problem.

Proposed Solutions

A fairly straightforward approach might be to appoint counsel for every defendant. This appears to be unwieldy and impractical. The project we are proposing will make an assessment of risk of incarceration and of financial eligibility for appointed counsel.

Methodology

In order to determine whether the proposed intervention had an effect and to study that effect, it is necessary to compare the results with a sample of similarly situated persons who did not receive court appointed counsel. In this instance, it may be difficult to avoid the effect of counsel on the overall system. For example, if counsel is appointed for half the defendants in a certain session, it seems likely that the judge may be influenced by arguments
made that day on behalf of other defendants. Comparing the response to other judges, such as those in Courtroom 1 get lawyers and those in Courtroom 2 do not, will be skewed by the different philosophical approaches two judges may have.

Two models may have some value. One, study the results of the current system in a systematic fashion, perhaps focusing on certain courthouses where the project will be implemented. After the program is in effect, study these results as well. In the alternative, implement the project fully in two courthouses. Find two courthouses of similar sizes serving more or less the same demographic population. Compare the results between the places where attorneys were appointed and those where they were not. I suggest some benchmarks for study are:

- The number of court appearances in a single case before incarceration;
- The amount of money owed and the purge amount;
- Whether the plaintiff or his/her interests were represented by counsel; and
- Whether incarceration led to more and swifter payment.

Generally speaking, to obtain study results which have significance, it is best to draw on the expertise of professionals dedicated to social science.

Project

We propose a pilot program in two counties. As described more fully below, the goal will be to ensure that low-income defendants at risk of incarceration will be appointed counsel, to protect their procedural rights and to advocate on their behalves.

1. Notice: A notice will be included with the Summons, informing the defendant of the risk of incarceration and the right to appointed counsel if eligible. The notice will be brightly colored, on separate paper and will be specified as a document served in the Return of Service. Informational materials will
also be provided to the plaintiff, explaining the possibility of appointed counsel.

2. **Defendant's Obligation to Take Action:** The defendant will be required to appear in the Probate and Family Court and file a request for counsel, together with a sworn statement as to her/his financial situation. The defendant MUST do this prior to the answer date, which is seven days from service.

3. **Assessment of Indigency:** Upon arrival in the Clerk's Office, the defendant will be directed to the Probation Department. Probation makes an assessment of eligibility for free legal services, as is consistent with District Court practice. The Probation Officer will interview the defendant and formulate a recommendation, which will be given to an Assistant Judicial Case Manager.

4. **Appointment:** All defendants who request counsel, will appear before an Assistant Judicial Case Manager.

   - If the defendant is ineligible, s/he will inform the defendant and decline to appoint counsel. The matter will be referred to a judge if the defendant requests further hearing on the matter.
   
   - If the defendant is eligible, the Assistant Judicial Case Manager may appoint an attorney from a list developed for that purpose. OR
   
   - The Assistant Judicial Case Manager may determine that the defendant is unlikely to be incarcerated and refer him/her to a judge. The Court will then determine whether this defendant is at risk of imprisonment.

   - If the Court determines there is no risk of
the attorney to prepare for the hearing. This roughly parallels the automatic extension of an eviction hearing when the tenant files an answer and request for discovery. In many Courts, the time between filing a contempt action and the hearing is at least four weeks. In most instances, therefore, the hearing will not need to be continued.

8. In the event that the case is continued for a review, the client should continue to be represented unless the Court determines that the defendant is no longer at any risk of incarceration.

We considered whether there were any further means to reduce fairly the number of defendants to be represented. The current practice of appointing counsel on the day of likely incarceration does not allow an attorney to meet with the client to prepare, develop evidence or have complete mastery over the allegations.

Outcome Measures

Clearly the data would include the impact on the class to be protected: contempt defendants. The most important benchmark would be how many, or what percentage of, defendants were incarcerated. It is to be hoped that the number would decrease significantly.

It may be interesting to see whether lawyers increase compliance with court orders. In such cases, a study of payment histories would yield interesting results. Is the defendant who had an attorney more likely to pay regularly, to pay on time and to pay in full? If so, is there a net gain to the taxpayer (the cost of counsel being more than offset by an employed - not incarcerated - individual, current on their obligations).
APPENDIX 6 C

FAMILY LAW COMMITTEE APPENDICES

FAMILY LAW SURVEY: PROVIDING A LIST OF VARIOUS TYPES OF FAMILY LAW CASES AND REQUESTING INPUT AS TO WHERE COUNSEL IS MOST NEEDED TO ENSURE A JUST OUTCOME
BBA Task Force on Expanding the Right to Counsel in Civil Cases

Probate & Family Court Survey

The American Bar Association adopted a resolution calling for the appointment of counsel for persons of **low income** in civil matters where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. Boston Bar Association President Tony Doniger has appointed a Task Force to find practical ways to explore expanding this right to counsel. The Task Force, which includes representatives from the Massachusetts Bar Association, the Access to Justice Commission, the Women’s Bar Association, the legal services community, the private bar, the courts and academia, is interested in your opinion on the types of cases where counsel are most needed for a just outcome.

Since we assume parties generally would benefit from counsel, the challenge is to identify the greatest need in light of the BBA mission. Given your daily experiences, we want to benefit from your vantage point within the court system. Because the charge to the BBA Task Force is to encourage brainstorming, we ask that you not focus at the moment on the resources that might be necessary to provide counsel for the types of cases you propose. We are at this stage simply trying to identify where counsel is most needed.

Your answers are CONFIDENTIAL. Thank you for your help.

The survey is being sent to you both by regular mail and by email. To complete the survey, you may either fill out your answers in the Word Perfect Document sent to you by email and return it by email to:

ilene.mitchell@jud.state.ma.us or you may print out the survey, fill out your answers, and fax it to Ilene Mitchell at the Administrative Office of the Probate and Family Court, 617-788-8995.

Please return the completed survey no later than December 14, 2007.

If you have any questions, please feel free to call or email Ilene Mitchell at the Administrative Office of the Probate and Family Court.
BBA Task Force on Expanding the Right to Counsel in Civil Cases

Probate & Family Court Survey

Name: (Optional)  Date:

Court: (Optional)

Please identify your role:
☐ Judge
☐ Register
☐ Judicial Case Manager
☐ Chief Probation Officer
☐ Other __________________________

In your opinion what are the three most important types of family law/probate cases where representation is needed because nothing short of representation can prevent the forfeiture of fundamental rights? Please choose up to three.

☐ Contempt proceedings which may result in incarceration
☐ Divorce
☐ Custody
☐ Abuse prevention
☐ Guardianship of Minor
☐ Guardianship—all other
☐ Paternity
☐ Domestic relations matters in which DSS intervenes or participates
☐ Any proceedings involving children
☐ Other, please specify __________________________
☐ Other, please specify __________________________
☐ Other, please specify __________________________
FOR EACH OF THE CASE TYPES CHOSEN, PLEASE ANSWER THE FOLLOWING QUESTIONS:

(The questions are repeated for each case type)

Type of case (choice one)_____________

1. Please explain why you believe legal representation is required?

____________________________________________________________________________________

2. At what stage of this proceeding should counsel be appointed to avoid the forfeiture of fundamental rights?
   
   □ Filing pleadings

   □ Referral to the Probation Department

   □ Temporary orders

   □ Status conference

   □ Pretrial conference

   □ Trial

   □ Other ________________________________

   □ Other ________________________________

   □ Other ________________________________

2.a. Would you limit the representation to cases where the opposing party is represented? If yes, would this depend on the stage of the proceeding?

3. If possible, please estimate the volume of cases (weekly, monthly or yearly) that would be involved, at least in your court, for the matter you have identified?
4. Should a particular feature, condition or characteristic of a party be considered a high priority when determining the need for counsel? Please check all those that apply.

☐ For a party who has custodial responsibility for children
☐ In cases where both parties are pro se
☐ For parties with language barriers
☐ For parties with cultural barriers
☐ For parties with mental disabilities
☐ For the elderly
☐ For parties who are victims of domestic violence
☐ Other __________________________________________
☐ Other __________________________________________
☐ Other __________________________________________

5. Please indicate whether there are features of the claims which should be considered high priority for the need to appoint counsel.

☐ Custody Dispute
☐ Violations of a court order are claimed, e.g., civil contempt cases
☐ Allegations of domestic violence
☐ Child support
☐ In cases where one or both parties have unusual financial situations, e.g., self-employed
☐ Other __________________________________________
☐ Other __________________________________________
☐ Other __________________________________________

Type of case (choice two) ____________

1. Please explain why you believe legal representation is required?

2. At what stage of this proceeding should counsel be appointed to avoid the forfeiture of fundamental rights?

☐ Filing pleadings
☐ Referral to the Probation Department
☐ Temporary orders
☐ Status conference
☐ Pretrial conference
☐ Trial
2.a. Would you limit the representation to cases where the opposing party is represented? If yes, would this depend on the stage of the proceeding?

3. If possible, please roughly estimate the volume of cases (weekly, monthly or yearly) that would be involved, at least in your court, for the matter you have identified?

4. Should a particular feature, condition or characteristic of a party be considered a high priority when determining the need for counsel?

   ☐ For a party who has custodial responsibility for children
   ☐ In cases where both parties are pro se
   ☐ For parties with language barriers
   ☐ For parties with cultural barriers
   ☐ For parties with mental disabilities
   ☐ For the elderly
   ☐ For parties who are victims of domestic violence
   ☐ Other
   ☐ Other
   ☐ Other

5. Please indicate whether there are features of the claims that should be considered high priority for the need to appoint counsel.

   ☐ Custody Dispute
   ☐ Violations of a court order are claimed, e.g., civil contempt cases
   ☐ Allegations of domestic violence
   ☐ Child support
   ☐ In cases where one or both parties have unusual financial situations, e.g., self-employed
   ☐ Other
   ☐ Other
   ☐ Other

Type of case (choice three)
1. Please explain why you believe legal representation is required?

2. At what stage of this proceeding should counsel be appointed to avoid the forfeiture of fundamental rights?

- [ ] Filing pleadings
- [ ] Referral to the Probation Department
- [ ] Temporary orders
- [ ] Status conference
- [ ] Pretrial conference
- [ ] Trial
- [ ] Other ________________________________
- [ ] Other ________________________________
- [ ] Other ________________________________

2.a. Would you limit the representation to cases where the opposing party is represented? If yes, would this depend on the stage of the proceeding?

3. If possible, please estimate the volume of cases (weekly, monthly or yearly) that would be involved, at least in your court, for the matter you have identified?

4. Should a particular feature, condition or characteristic of a party be considered a high priority when determining the need for counsel?

- [ ] For a party who has custodial responsibility for children
- [ ] In cases where both parties are pro se
- [ ] For parties with language barriers
- [ ] For parties with cultural barriers
- [ ] For parties with mental disabilities
- [ ] For the elderly
- [ ] For parties who are victims of domestic violence
- [ ] Other ________________________________
- [ ] Other ________________________________
- [ ] Other ________________________________

5. Please indicate whether there are features of the claims which should be considered high priority for the need to appoint counsel.
☐ Custody Dispute
☐ Violations of a court order are claimed, e.g., civil contempt cases
☐ Allegations of domestic violence
☐ Child support
☐ In cases where one or both parties have unusual financial situations, e.g., self-employed
☐ Other ____________________________
☐ Other ____________________________
☐ Other ____________________________

If you would like to further explain your responses, please provide your contact information:

________________________________________________________________________

________________________________________________________________________

Thank you.
APPENDIX 6 D

FAMILY LAW COMMITTEE APPENDICES

PROPOSAL FOR PILOT PROJECT REGARDING THE
GUARDIANSHIP OF ELDERS
PROPOSAL FOR PILOT PROJECT REGARDING
THE GUARDIANSHIP OF ELDERS

INTRODUCTION

As a recent Boston Globe article (Courts strip elders of their independence, January 13, 2008) reveals, cases involving the guardianship of adults are replete with risk for the proposed wards. The ward often faces the complete loss of his or her independence, the loss of control over his or her financial affairs, and the loss of significant personal and civil rights which can be given over to the plenary control of a Court-appointed guardian.

At the initial hearing where an order of temporary guardianship is sought, this risk is especially significant because the proposed ward has received no prior notice and is therefore not present. Without notice and an opportunity to be heard, the ward is at a distinct disadvantage because the Court has access only to the often-biased information provided by the petitioner.

NEED

The elder population of the United States is expected to grow from an estimated 31.5 million in 2000 to a projected 70 million by 2030. Of this astronomical number, a significant proportion of these individuals are likely to be “unbefriended elders,” those who have no living relatives or friends upon whom to rely, or who could potentially be appointed as guardians in the event that the elderly person can no longer care for him or herself.

In 2007, over 3500 guardianship petitions were filed in the Probate and Family Courts statewide, petitioning the court for guardianship of persons who were allegedly mentally ill or incapacitated. Although the exact figure of unrepresented individuals is unknown, it is highly likely that a vast majority of these individuals do not have benefit of counsel.

Without appointment of counsel and notice to the ward prior to the temporary guardianship hearing, the ward’s involvement in this process which will drastically impact his or her daily life and decision-making power is severely limited right from the start. Guardianship cases are often complex and require investigation into the unique circumstances of the particular ward. While a proposed ward may indeed have some incapacity, determining the level of that incapacity requires a close evaluation of medical evidence that is almost always complex and voluminous.
CURRENT SCOPE OF RIGHT TO COUNSEL

There is currently a Uniform Probate Code (UPC) bill pending in the Massachusetts legislature that would provide for the appointment of counsel in guardianship matters. The Probate and Family Court has recently revised the Medical Affidavit to require more detailed and specific information from a treating physician to support the need for guardianship and the Court has instituted a pilot project providing counsel to a limited number of individuals. This proposal substantially mirrors the proposed legislation with respect to guardianship proceedings and it is hoped that the Pilot Project will provide further substantive support for enactment of the UPC.

POTENTIAL FOR EXPANSION

 METHODOLOGY

OUTREACH

DATA

PROPOSED SOLUTIONS/RECOMMENDATIONS

The most comprehensive solution is the enactment of the pending UPC legislation that would provide the court with authority to appoint counsel to proposed wards prior to the entry of any temporary order of guardianship. In the interim, the Pilot currently in place in _____________ ___________ and _____________ counties Program and the proposed project below could be expanded to all counties.

PROPOSAL

I. At the time of filing of a Petition, the Court shall determine whether appointment of counsel is in the interests of the proposed ward. In circumstances where the proposed ward or someone on his or her behalf requests appointment, the Court shall appoint counsel.
II. Notification to the proposed ward concerning the procedure and opportunity for appointment of counsel will be on a brightly-colored document using large font size, and shall be provided in advance of the initial hearing. The Return of Service shall reflect that such notification has been served.

III. Under all circumstances, when the proposed ward seeks counsel from the Court or the Court determines that appointment of counsel is appropriate, the case will be continued for two weeks in order to ensure that the ward and counsel can adequately prepare for the initial hearing.

IV. In circumstances where the ward has adequate resources, Counsel shall be compensated from the estate. Where the ward is indigent, Counsel shall be compensated by the Commonwealth (or by such other resources as the pilot program procures). Where the ward is incompetent to obtain counsel, incapable of locating or contracting with an attorney or incapable of obtaining access to funds with which to compensate Counsel, the Court shall authorize the continued services of appointed counsel at public expense. If the Court subsequently determines that the party is not indigent, assigned counsel shall continue to represent the party and the party may be ordered to reimburse the Commonwealth.

V. The statistics from the Administrative Office indicate that Suffolk and Middlesex Probate and Family Courts have the highest number of guardianship petitions filed, and the proposal is that pilot programs be instituted in these two courts initially.

OUTCOME MEASURES

BUDGET

AVAILABLE RESOURCES/FUNDING SOURCES
ADDENDUM A

Proposed UPC: ARTICLE V

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

Part I
GENERAL PROVISIONS AND DEFINITIONS

Section 5-101. [General Definitions.]

As used in Parts 1, 2, 3 and 4 of this Article:

(1) "Claims," in respect to a protected person, includes liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator" means a person who is appointed by a Court to manage the estate of a protected person and includes a limited conservator, temporary conservator and special conservator.

(3) "Court" means the Probate and Family Court Department of the Trial Court and includes the District Court and Juvenile Court Departments of the Trial Court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such District or Juvenile Court.

(4) "Disability" means cause for a protective order as described in Section 5-401.

(5) "Estate" includes the property of the person whose affairs are subject to this Article.

(6) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a guardian ad litem.

(7) "Guardian-ad-Litem" means a person or organization appointed under Sections 1-404 and 5-106 of this Code.

(8) "Health care proxy" means a health care proxy executed pursuant to chapter two hundred one D, a durable power of attorney for health care executed prior to the enactment of chapter two hundred one D and similar instruments for appointment of health care agents executed in accordance with the laws of other jurisdictions.

(9) "Incapacitated person" means an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.
(10) "Lease" includes an oil, gas, or other mineral lease.

(11) "Letters" includes Certificate of Guardianship and Certificate of Conservatorship.

(12) "Mentally retarded person" means an individual who has a substantial limitation in present functioning beginning before age 18, manifested by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more of the following applicable adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functioning academics, leisure, and work.

(13) "Minor" means a person who is under 18 years of age.

(14) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as collateral.

(15) "Nursing facility" means an institution (or a distinct part of an institution) which is primarily engaged in providing to residents:

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily a mental health facility or mental retardation facility.

(16) "Organization" includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(17) "Parent" means a natural or adoptive parent other than a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender.

(18) "Person" means an individual or an organization.

(19) "Petition" means a written request to the Court for an order after notice.

(20) "Proceeding" includes action at law and suit in equity.

(21) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
(22) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made as provided in Sections 5-407 and 5-408.

(23) "Protective proceeding" means a proceeding under the provisions of Part 4 of this Article.

(24) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(25) "Ward" means a person for whom a guardian has been appointed solely because of minority.

Section 5-102. [Facility of Payment or Delivery.]

(a) Any person under a duty to pay or deliver money or personal property to a minor may perform the duty, in amounts not exceeding $5,000 a year, by paying or delivering the money or property to:

(1) the minor;

(2) any person having the care and custody of the minor with whom the minor resides;

(3) a guardian of the minor;

(4) a custodian under the Uniform Transfers to Minors Act or a custodial trustee under the Uniform Custodial Trust Act; or

(5) a financial institution as a deposit in a state or federally insured interest bearing account or certificate in the sole name of the minor with notice of the deposit to the minor.

(b) If the person making payment or delivery knows that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending, the person may make payment or delivery only to the conservator.

(c) Persons, receiving money or property for a minor under subsection (a)(2) are obligated to apply the money to the support, care, education, health or welfare of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket
expenses for necessary goods and services. Any excess sums must be preserved for future support, care, education, health or welfare of the minor and any balance not so used and any property received for the minor must be turned over to the minor when majority is attained.

(d) A person who pays or delivers money or property in accordance with provisions of this section is not responsible for the proper application thereof.

Section 5-103. [Delegation of Powers by Parent or Guardian.]

(a) A parent or parents of a minor, other than a parent or parents whose parental rights have been terminated or a parent who has signed a voluntary surrender, or a guardian or guardians of a minor or incapacitated person may appoint a temporary agent for a period not exceeding 60 days, and may delegate to such agent any power that the parent or guardian has regarding the care, custody or property of the minor child, ward or incapacitated person, except the power to consent to marriage or adoption of a minor; provided, however, that no parent or guardian shall appoint a temporary agent when a court has ordered that the minor child be placed in the custody of a person other than the parent or guardian.

(b) Any delegation under this Section shall be by a writing signed by, or at the direction of, the parent(s) or guardian(s) and attested by at least 2 witnesses 18 years of age or older, neither of whom is the temporary agent together with the written acceptance of the temporary agent.

(c) A parent or guardian may not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor unless the nonappointing parent consents to the appointment in writing. A parent may not appoint a temporary agent if the appointing parent's parental rights have been terminated or a parent who has signed a voluntary surrender.

(d) Any delegation under this Section may be revoked or amended by the appointing parent(s) or guardian(s) and delivered to all interested persons. The authority of the temporary agent may be limited or altered by the Court.

Section 5-105. [Venue.]

(a) Provided that the Court has jurisdiction:

(1) venue for a guardianship proceeding for a minor is in the Court at the place where the minor resides at the time the proceedings are commenced, or, in the case of a nomination of a guardian by the will of a parent or guardian, in the Court of the county in which the will was or could be probated except venue for a guardianship proceeding for a minor in
District Court of Juvenile Court shall be in the Court where the underlying proceeding was filed;

(2) venue for a guardianship proceeding for an incapacitated person is in the Court at the place where the incapacitated person resides at the time the proceedings are commenced, or, in the case of a nomination of by the will of a parent or spouse, in the Court of the county in which the will was or could be probated. If the incapacitated person has been admitted to a facility referred to in chapter one hundred eleven, section 70E pursuant to an order of a court of competent jurisdiction, venue is also in the county in which that facility is located; and

(3) venue for a protective proceeding is in the Court at the place where the person to be protected resides at the time the proceedings are commenced, whether or not a guardian has been appointed in another place or, if the person to be protected does not reside in this commonwealth, in the Court at the place where property of the person is located.

(b) If a proceeding under this Code is brought in more than one place in this commonwealth, the Court at the place in which a proceeding is first brought has the exclusive right to proceed unless that Court determines that venue is properly in another Court or that the interests of justice otherwise require that the proceeding be transferred.

Section 5-106. [Appointment of Counsel; Guardian ad Litem.]

(a) After filing of a petition for appointment of a guardian, conservator or other protective order, if the ward, incapacitated person or person to be protected or someone on his or her behalf requests appointment of counsel; or if the Court determines at any time in the proceeding that the interests of the ward, incapacitated person or person to be protected are or may be inadequately represented, the Court shall appoint an attorney to represent the person, giving consideration to the choice of the person if 14 or more years of age. If the ward, incapacitated person or person to be protected has adequate resources, his or her counsel shall be compensated from the estate, unless the Court shall order that such compensation be paid by the petitioner. Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth. This section shall not be interpreted to abridge or limit the right of any ward, incapacitated person or person to be protected to retain counsel of his or her own choice and to prosecute or defend a petition under this Article.

(b) The Court may appoint as guardian ad litem, an individual or any public or charitable agency to investigate the condition of the ward, incapacitated person or person to be protected and make appropriate recommendations to the Court.

(c) The incapacitated person or person to be protected is entitled to be present at any hearing in person. A ward, if 14 or more years of age, is entitled to be present at any hearing in person unless the Court, upon written findings, determines that the best interest of the ward will not be served thereby. The person is entitled to be represented by
counsel, to present evidence, to cross-examine witnesses, including any physician or other qualified person and any guardian ad litem. The issue may be determined at a closed hearing if the person or counsel for the person so requests.

(d) Any person may apply for permission to provide information in the proceeding and the Court may grant the request, with or without hearing, upon determining that the best interest of the person to be protected will be served thereby. The Court may attach appropriate conditions to the permission.
APPENDIX 7

RESEARCH AND LITIGATION COMMITTEE
APPENDICES

LISTING OF ALL FEE SHIFTING STATUTES
LIA MARINO, SUFFOLK LAW STUDENT
FEBRUARY 21, 2008
To: BBA Task Force Subcommittee on Research
From: Lia Marino, Suffolk University Law Student
Re: List of all fee shifting statutes
Date: February 21, 2008

This is a list of the Massachusetts General Laws that provide for attorney’s fees as of February 2008. The list is divided into those statutes mentioned in the article “Attorney fees provided by statute” by Martin W. Healy in the Massachusetts Bar Association Law Journal, June 1998 and those adopted as of February 2008.

Statutes Mentioned in Article

Impairment of Civil Rights; Private Remedy.
GL c 12 § 11I

Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11I, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages. Any aggrieved person or persons who prevail in an action authorized by this section shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

Long Term Care Ombudsman - Retaliation Against Complainants.
GL c 19A § 33A

No long term care facility or other entity shall retaliate against any resident or employee of such facility or entity who in good faith filed a complaint with, or provided information to the state long term care ombudsman, his or her designees, or any certified local ombudsman. A long term care facility which retaliates against such resident or employee for having filed a complaint with, or having provided information to the state long term care ombudsman, his or her designee, or any certified local ombudsman shall be liable to the person so retaliated against by a civil action for up to treble damages, costs, and attorneys fees.

Retaliation Against Reporting Party Prohibited; Penalties.
GL c 19c § 11

No person shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against or thereafter take any other retaliatory action against any employee, client or other person for filing a report with the commission or testifying in any commission proceeding or providing information to the commission, the general counsel or the secretary of health and human services or any department, office, commission or other agency within the executive office of health and human services in the course of an investigation of alleged abuse of a disabled person. Any person who willfully violates this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.
In addition, any person who takes such prohibited action against an employee, client or other person may be liable to that employee, client or other person for treble damages, costs and attorney's fees.

Motor Vehicle Withholding Certificate; Bond.
GL c 90D § 12

If the registrar is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the registrar may register the vehicle but shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the registrar as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(b) As a condition of issuing a certificate of title, require the applicant to file with the registrar a bond in such form as the registrar shall prescribe executed by the applicant, and either accompanied by the deposit of cash with the registrar or also executed by a person authorized to conduct a surety business within the commonwealth.

The bond shall be in an amount equal to one and one half times the value of the vehicle as determined by the registrar and conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle.

Actions for Damages; Injunctions; Class Actions; Settlement; Attorneys' Fees and Costs.
GL c 93A § 11

Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under paragraph (c) of section two may, as hereinafter provided, bring an action in the superior court, or in the housing court as provided in section three of chapter one hundred and eighty-five C, whether by way of original complaint, counterclaim, cross-claim or third-party action for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

... A person may assert a claim under this section in a district court, whether by way of original complaint, counterclaim, cross-claim or third-party action, for money damages only. Said damages may include double or treble damages, attorneys' fees and costs, as hereinafter provided, with provision for tendering by the person against whom the claim is asserted of a written offer of settlement for single damages, also as hereinafter provided. No rights to equitable relief shall be created under this paragraph, nor shall a person asserting such claim be able to assert any claim on behalf of other similarly injured and situated persons as provided in the preceding paragraph. The provisions of sections ninety-five to one hundred and ten, inclusive, of chapter two hundred and thirty-one, where applicable, shall apply to a
claim under this section, except that the provisions for remand, removal and transfer shall be controlled by the amount of single damages claimed hereunder.

Unconscionability.
GL c. 106 § 2A-108

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability, the court shall award reasonable attorney's fees to the party against whom the claim is made if the criteria of sections six E to six G, inclusive, of chapter two hundred and thirty-one are met.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

Liquidation of Damages.
GL c. 106 § 2A-504

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his payment exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.
Transfer Warranties.
GL c. 106 § 2-416

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

Comments:
6. Subsection (b) states the measure of damages for breach of warranty. There is no express provision for attorney's fees, but attorney's fees are not meant to be necessarily excluded. They could be granted because they fit within the phrase "expenses... incurred as a result of the breach." The intention is to leave to other state law the issue as to when attorney's fees are recoverable.

Remedies.
GL c. 106 § 5-111

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

Collection and Enforcement by Secured Party.
GL c. 106 § 9-607

(d) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.
GL c. 106 § 9-608

(a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607 in the following order to:
(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.
GL c. 106 § 9-615

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing

Explanation of Calculation of Surplus or Deficiency.
GL c. 106 § 9-616

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

Action in Which Deficiency or Surplus is in Issue.
GL c. 106 § 9-626

(3) Except as otherwise provided in Section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

Limited Partnership - DERIVATIVE ACTIONS'
GL c 109 § 59

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

Protection and Care of Children, and Proceedings Against Them – report
GL c 119 § 51A

No employer of those persons required to report pursuant to this section shall discharge, or in any manner discriminate or retaliate against, any person who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect. Any such employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.

Child Support Enforcement
GL c 119A § 1A
"Support order", a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, which provides for monetary support, health care coverage, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other monetary relief. For purposes of enforcement only, "support order" includes an order for the support of a parent with whom the child is living.

Mobile Home Parks
GL c. 140 § 32N

Any manufactured housing community licensee or his agent who threatens to or takes reprisals against any manufactured housing community resident or group of residents for reporting a violation or suspected violation of section thirty-two L or section thirty-two M or any applicable building or health code to the board of health of a city or town in which the manufactured housing community is located, the department of public health, the department of the attorney general or any other appropriate government agency, shall be liable for damages which shall not be less than one month's rent or more than five months' rent, or the actual damages sustained by the manufactured housing community resident or group of residents, whichever is greater, and the costs of the court action brought for said damages including reasonable attorney's fees.

Labor Relations - Persons in Domestic Service as Employees;
GL c 150A § 3A

Anything contained in this chapter to the contrary notwithstanding as regards sections one, two, three, four (1), four (4), ten, eleven and twelve, the term "employee" shall include any individual, over the age of seventeen, employed in the domestic service of any family or person at his home for not less than sixteen hours per week. In the event of a violation of section four (1) or four (4) by an employer of any such individual, the department of labor and workforce development shall have all necessary and appropriate powers to conduct an investigation of such violation. The discharge of any such individual, within three months after the making of a report or complaint of any violation of section four (1) or four (4), known to the employer, shall create a rebuttable presumption that such discharge is a reprisal against such individual. In such case, the employer of such individual shall be liable for damages which shall not be less than one month's wages nor more than two months' wages of such individual, and the costs of the suit, including a reasonable attorney's fee.

Minimum Fair Wages

GL c 151 § 19

(1) Any employer and his agent, or the officer or agent of any corporation who discharges or in any other manner discriminates against any employee, including any employee in the domestic service of any family or person at his home for not less than sixteen hours per week, because such employee has complained of a violation of the provisions of this chapter, or has testified or is about to testify in any investigation or proceeding under or related to this chapter, or because such
employer believes that said employee or individual may complain of a violation of the provisions of this chapter, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and shall be liable for damages which shall not be less than one month’s wages nor more than two month’s wages of such individual, and the costs of the suit, including a reasonable attorney’s fee.

Unlawful Discrimination Because of Race, Color, Religious Creed, National Origin, Ancestry or Sex – Establishment of Commission
GL c. 151B § 3

15. To set, charge and retain fees and costs, subject to section 3B of chapter 7, including, but not limited to, training fees and costs incurred responding to requests under the commonwealth's public records law; provided, that the commission may, where appropriate, provide for the waiver of the fees; to retain reasonable attorney's fees and costs awarded to a prevailing complainant, under section 5, when one of its attorneys presents the charge of discrimination before the commission on behalf of the prevailing complainant. All amounts received under this clause shall be deposited to the General Fund.

Workers' Compensation
GL c 152 § 15

The expenses of attorney’s fees shall be divided between the insurer and the employee in proportion to the amounts received by them respectively.

Electronic Branches and Electronic Fund Transfers
GL c 167B § 20

any person who fails to comply with any provision of this chapter with respect to any consumer, except for an error resolved in accordance with section seventeen, is liable to such consumer in an amount equal to the sum of... (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

Penalty on Lessor for Failure to Furnish Water, Heat, etc.; Waivers by Tenant Prohibited.
GL c. 186 § 14

Any person who commits any act in violation of this section shall also be liable for actual and consequential damages or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing.

Void Provisions of Residential Leases; Lessor's Right of Entry; Rent in Advance for Last Month of Tenancy; Security Deposit; Interest or Penalty for Failure to Pay Rent, etc.
GL c. 186 § 15B

If the lessor fails to pay any interest to which the tenant is then entitled within thirty days after the termination of the tenancy, the tenant upon proof of the same in an action against the lessor shall be awarded damages in an amount equal to three
times the amount of interest to which the tenant is entitled, together with court costs and reasonable attorneys fees.

Residential Lease Provisions; Tenant's Waiver of Right of Jury Trial; Constructive Eviction; Liability of Landlord.
GL c. 186 § 15F

If a tenant is removed from the premises or excluded therefrom by the landlord or his agent except pursuant to a valid court order, the tenant may recover possession or terminate the rental agreement and, in either case, recover three months' rent or three times the damages sustained by him, and the cost of suit, including reasonable attorney's fees.

Recovery of Attorneys' Fees in Actions for Proceedings Involving Leases of Residential Property.
GL c. 186 § 20

Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. Any waiver of this section shall be void as against public policy.

Compensation and Expenses of Executor, etc.
GL c. 206 § 16

An executor, administrator, guardian, conservator or trustee shall be allowed his reasonable expenses, costs and counsel fees incurred in the execution of his trust, and shall have such compensation for services as the court may allow. Such compensation, expenses, costs and counsel fees may be apportioned between principal and income as the court may determine.

Actions to Recover Actual or Punitive Damages for, or for Injunctions or Mandamus against, Disclosure of Personal Data by Holder.
GL c. 214 § 3B

Any holder, as that term is defined in chapter sixty-six A, which violates any provision of said chapter sixty-six A, shall be liable to any individual who suffers any damage as a result of such violations, and the individual damaged may bring an action against such holder to recover any damages sustained. Notwithstanding any liability for actual damages as may be shown, such holder shall be liable for exemplary damages of not less than one hundred dollars for each violation together
Transfer of Civil Actions Brought in Wrong Court.
GL c. 218 § 2A

Each district court shall have civil jurisdiction of actions local or transitory begun in such court which should have been brought in some other district court, to the extent that the court in which the action is begun may try and dispose of the case if the question of venue is waived or, if not waived, the court may, on motion of any party, order the action, with all papers relating thereto, to be transferred for trial or disposition to any other district court in which the action might have been commenced. The defendant in said action shall be entitled to costs and such reasonable attorney's fees as may be allowed by the court. Said action shall thereupon be entered and prosecuted in such court as if it had been originally commenced therein, and all prior proceedings otherwise regularly taken shall thereafter be valid. An additional entry fee for entry in the court to which the case is transferred shall be paid to the clerk of the transmitting court for transfer with the papers.

Finality of Judgment; Removal.
GL c 218 § 23

Every cause begun under the procedure shall be determined initially in the district court department. No such cause may be removed for trial in the superior court department. In any action for property damage caused by a motor vehicle where the action is transferred to the regular civil docket in the district court department by the insurer and the unpaid party recovers a judgment for any amount due and payable by the insurer, the court shall assess against the insurer in addition thereto, costs and reasonable attorney's fees.

Attorney's Lien for Fees, etc.
GL c 221 § 50

From the authorized commencement of an action, counterclaim or other proceeding in any court, or appearance in any proceeding before any state or federal department, board or commission, the attorney who appears for a client in such proceeding shall have a lien for his reasonable fees and expenses upon his client's cause of action, counterclaim or claim, upon the judgment, decree or other order in his client's favor entered or made in such proceeding, and upon the proceeds derived therefrom. Upon request of the client or of the attorney, the court in which the proceeding is pending or, if the proceeding is not pending in a court, the superior court, may determine and enforce the lien; provided, that the provisions of this sentence [section] shall not apply to any case where the method of the determination of attorneys' fees is otherwise expressly provided by statute.

Award of Costs and Counsel Fees in Frivolous, etc., Actions.
GL c 231 § 6F

If such a finding is made with respect to a party's claims, the court shall award to each party against whom such claims were asserted an amount representing the reasonable counsel fees and other costs and expenses incurred in defending against such claims. If the party against whom such claims were asserted was not represented by counsel, the court shall award to such party an amount representing his reasonable costs, expenses and effort in defending against such claims. If such a
finding is made with respect to a party's defenses, setoffs or counterclaims, the court shall award to each party against whom such defenses, setoffs or counterclaims were asserted (1) interest on the unpaid portion of the monetary claim at issue in such defense, setoff or counterclaim at one hundred and fifty per cent of the rate set in section six C from the date when the claim was due to the claimant pursuant to the substantive rules of law pertaining thereto, which date shall be stated in the award, until the claim is paid in full; and (2) an amount representing the reasonable counsel fees, costs and expenses of the claimant in prosecuting his claims or in defending against those setoffs or counterclaims found to have been wholly insubstantial, frivolous and not advanced in good faith.

Civil Liability of Employer for Failure to Compensate Juror-Employee; Damages; Attorney Fees.
GL c 234A § 60

Any employer who fails to compensate a juror-employee under the applicable provisions of this chapter and who has not been excused from such duty or compensation shall be liable to the juror-employee in tort. Upon the expiration of thirty days after the tender of the juror service certificate to the employer, the juror may commence a civil action in any superior or district court having jurisdiction over the parties. Extreme financial hardship on the employer shall not be a defense to this action. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful conduct by the employer.

Statutes As of 2/2008

Knowledge of False or Fraudulent Claims.
GL c 12 § 5B

Any person who:

(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval... shall also be liable to the commonwealth or any political subdivision for the expenses of the civil action brought to recover any such penalty or damages, including without limitation reasonable attorney's fees.

Release or Threat of Release of Oil or Hazardous Material; Apportionment of Costs; Treble Damages; Nullification of Indemnification, Hold Harmless, or Similar Agreements.
GL c 21E § 5

1) the owner or operator of a vessel or a site from or at which there is or has been a release or threat of release of oil or hazardous material; (2) any person who at the time of storage or disposal of any hazardous material owned or operated any site at or upon which such hazardous material was stored or disposed of and from which there is or has been a release or threat of release of hazardous material ...
In cases where the department has issued an order pursuant to sections nine and ten to a person liable pursuant to this chapter and such person has unreasonably or in bad faith failed or refused to comply with such order, the court shall award the
commonwealth not less than two times nor more than three times the full amount of its response costs, plus litigation costs and reasonable attorneys' fees, against such liable person

Department May Make Non-Interest Bearing Advances to Housing Authorities for Defrayal of Development Costs of Low Rent Housing; Reimbursement.

GL c 23B § 10A

The department may enter into a contract with a local housing authority for the purpose of assisting housing development by expending such monies as may be appropriated for the purpose of making non-interest bearing advances to housing authorities organized under the provisions of chapter one hundred and twenty-one B to enable them to construct low rent housing projects, as defined in said chapter one hundred and twenty-one B, provided the department shall, pursuant to regulations made by it, make the following findings:... (b) legal and organizational expenses including payment of attorney's fees, project manager and clerical staff salaries, office rent and other incidental studies; advances for planning, engineering and architectural work; and, (c) such other expenses incurred by the authority as the department may deem appropriate to effectuate the purposes of this section. The housing authority shall reimburse the commonwealth for all monies advanced under this section from the proceeds of any bonds or notes issued under sections thirty-four or forty-one of said chapter one hundred and twenty-one B of the General Laws.

Application for Approval. Smart growth district

(a) A city or town may incorporate provisions within the smart growth district zoning ordinance or by-law that prescribe contents of an application for approval of a project. The ordinance or by-law may require the applicant to pay for reasonable consulting fees to provide peer review of the applications for the benefit of the approving authority. Such fees shall be held by the municipality in a separate account and used only for expenses associated with the review of the development application by outside consultants and any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith. The smart growth zoning district ordinance or by-law may provide for the referral of the plan to municipal officers, agencies or boards other than the approving authority for comment. Any such board, agency or officer shall provide any comments within 60 days of its receipt of a copy of the plan and application for approval. (h) A plaintiff seeking to reverse approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated: (i) annual carrying costs of the property owner, or a person or entity carrying such costs on behalf of the owner for the property, as may be established by affidavit; plus (ii) an amount sufficient to cover the defendant's attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction. The bond shall be forfeited to the property owner in an amount sufficient to cover the property owner's carrying costs and legal fees less any net income received by the plaintiff from the property during the pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.
Taxpayer Suits.
GL c 62F § 7

The Supreme Judicial Court or Superior Court may, upon the petition of not less than twenty-four taxable inhabitants of the Commonwealth, not more than six of whom shall be from any one county, enforce the provisions of this chapter. If successful, said taxable inhabitants shall be entitled to recover reasonable attorneys' fees and other costs from the Commonwealth incurred in maintaining such suit.

Cigarette Excise

Any manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells cigarettes, other than through retail sale, in violation of section 2B shall be subject to a civil penalty not to exceed $10,000 per each such sale of such cigarettes for a first violation and a civil penalty not to exceed $25,000 per each such sale of cigarettes for a second or subsequent violation. Any retail dealer who knowingly sells cigarettes in violation of section 2B shall be subject to the following:...

(d) In addition to any other remedy provided by law, the attorney general may file an action in state court for a violation of sections 2B to 2E, inclusive, including petitioning for injunctive relief or to recover any costs or damages suffered by the commonwealth due to a violation of such sections, including enforcement costs relating to the specific violation and attorney's fees. In any such action, the attorney general shall have the same authority to investigate and to obtain remedies as if the action were brought under chapter 93A. Each violation of sections 2B to 2E, inclusive, or of regulations adopted under this section constitutes a separate civil violation for which the attorney general may obtain relief.

Petition for Relief Upon Refusal to Furnish Transcript of Student's Record.
GL c 71 § 34B

In case any person subject to section thirty-four A shall refuse or neglect for thirty days after such request to furnish such a written transcript, the student or former student requesting the same or, if a minor, his guardian or next friend, may present to the superior court for the county within which such person so subject resides or such institution is located, or for the county of Suffolk, a petition addressed to said court and praying for such relief as it may deem proper in the circumstances; and thereupon such court shall have jurisdiction of such petition and may issue such orders relative thereto as it may deem proper, and any failure or refusal to obey any such order may be treated by the court as a contempt thereof. Upon any such petition the court may award costs and reasonable attorney's fees to the petitioner.

Racial Imbalance by School Committees.
GL c 71 § 37D

The supreme judicial and superior courts shall have jurisdiction in equity over actions commenced by the board or by or on behalf of any pupil to enforce the provisions of this section; provided, however, that in any such action commenced by or on behalf of any pupil to enforce his right, as provided by this section, to be transferred to and to attend any school, which action is concluded in favor of such pupil, the school committee or regional district school committee having jurisdiction over such school
shall be liable to such pupil or the person commencing such action on his behalf for his costs and reasonable attorney’s fees.

Recovery by Pupil Misled by Representations; Limitation on Liability; Joint and Several Liability.
GL c 75C § 10

Any pupil of a correspondence school, who is misled by a representation made by an officer or representative of the school, or by any advertisement or circular issued by the school, which representation was untrue, deceptive, or misleading, and which the person responsible for such representation knew, or might on reasonable investigation have known to be untrue, deceptive, or misleading, may recover for damages sustained, or five hundred dollars, whichever is the greater, plus court and reasonable attorney’s fees provided, however, that the liability of the surety on the bond shall be limited to indemnifying the claimant only for his actual damages.

Operation of Vessel Under Influence of Liquor or Drugs; Water Skiing; Reckless Operation.
GL c 90B § 8

(B) Any person whose license, permit or right to operate motor vehicles has been suspended or whose certificate of number has been revoked under this paragraph shall be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the officer have reasonable grounds to believe that such person had been operating a vessel while under the influence of intoxicating liquor on the waters of the commonwealth, (ii) was such person placed under arrest and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall reinstate such license, permit or right to operate motor vehicles of such person and shall notify the director of such reinstatement. Upon receipt of such notification, the director shall reinstate such certificate of number to the vessel of such person.

Notwithstanding any of the foregoing, any person whose certificate of number has been revoked under this paragraph may at any time apply for and shall, within fifteen days, be granted a hearing before the director for the purpose of requesting the issuance of a certificate of number on the grounds of hardship and the director may, in his discretion, issue such certificate of number under such terms and conditions as he deems appropriate and necessary.

If a person fails to pay a civil administrative penalty assessed pursuant to this section within ninety days of the time it becomes final, such person shall be liable to the commonwealth for up to three times the amount of such penalty, together with the costs, plus interest from the time the civil administrative penalty became final, including all costs and attorney’s fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section six C of chapter two hundred and thirty-one. The director shall refuse to issue an original certificate of number or to renew the certificate of number for any boat owned by a person who fails to pay such civil administrative penalty and any related penalties or costs, until such payment is made in full.

Complaint Against Lienholder.
GL c 90D § 24A
(h) Each lienholder who fails to pay a civil administrative penalty on time, and each lienholder who issues a bond pursuant to this section and who fails to pay to the registrar on time the amount required hereunder, shall be liable to the registrar for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section 6C of chapter 231.

Prohibited Uses of Watersheds; Informational Hearings; Exceptions; Penalties.
GL c 92A1/2 § 5

(a) Any alteration, or the generation, storage, disposal, or discharge of pollutants is prohibited within those portions of the watersheds that lie within 200 feet of the bank of a tributary or surface waters or within 400 feet of the bank of a reservoir.

(k) The division, after consultation with the department of environmental protection, shall issue regulations pursuant to section 6 for appealing the inclusion of a location in the areas regulated by this section. It shall be the responsibility of the appellant to prove that the location was improperly included. If the appeal is decided in the appellant's favor, a court of competent jurisdiction shall award to appellant reasonable attorney fees, costs and expenses incurred in the action.

Action by Attorney General; Pares Patriae Action; Jurisdiction of Superior Court.
GL c 93 § 9

The attorney general may bring a civil action in the name of the commonwealth to prevent and restrain violations of section four, five or six of this chapter; as pares patriae on behalf of natural persons residing in the commonwealth, to secure monetary relief for damages sustained by such natural persons to their property by reason of any violation of section four; and on behalf of the commonwealth and its public agencies and political subdivisions for damages sustained, together with costs of suit, for injuries to their property by reason of violations of section four, five or six; provided, however, that unless the attorney general has brought a criminal complaint pursuant to section ten, the attorney general may bring a civil action in the name of the commonwealth to recover a civil penalty of not more than twenty-five thousand dollars for any course of conduct, pattern of activity or activities which violate section four, five or six. In any action brought on behalf of the commonwealth and its public agencies and political subdivisions for damages sustained to their property, if the court finds that the violation was engaged in with malicious intent to injure the commonwealth, public agency or political subdivision, the court may award up to three times the amount of actual damages sustained together with the costs of suit, including reasonable attorneys fees.

Public Health - Provisions for Competent Interpreter Services
GL c 111 § 25J

Any non-English speaker, who is denied appropriate emergency health care services by an acute-care hospital by reason of such hospital's not having exercised reasonable judgment in making competent interpreter services available, as required by this section, or the attorney general upon receiving written notice from a regulating state agency that such hospital is substantially failing to comply with applicable interpreter requirements, shall have a right of action in the superior court
against such hospital for declaratory or injunctive relief. A non-English speaker bringing such action shall not be required to exhaust any administrative remedies that may be available to him and may be awarded damages for any actual harm suffered, but at least $250 in damages shall be awarded for each violation, together with such costs, including expert fees and attorney’s fees, as may be reasonably incurred in such action. Such action shall be brought within three years of any such failure to provide competent interpreter services.

Presentment Warranties.
GL c. 106 § 3-417

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

1. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

2. the draft has not been altered; and

3. the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

5. The measure of damages for breach of warranty under subsection (a) is stated in subsection (b). There is no express provision for attorney’s fees, but attorney’s fees are not meant to be necessarily excluded. They could be granted because they fit within the language “expenses... resulting from the breach.” Subsection (b) provides that the right of the drawee to recover for breach of warranty is not affected by a failure of the drawee to exercise ordinary care in paying the draft.

Cancellation and Amendment of Payment Order.
GL c. 106 § 4A-211

(f) Unless otherwise provided in an agreement of the parties or in a funds transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds transfer system rule allowing cancellation or amendment without the bank’s agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys’ fees,
incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

**Liability for Late or Improper Execution or Failure to Execute Payment Order.**
GL c. 106 § 4A-305

*(e)* Reasonable attorneys' fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

**Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary.**
GL c. 106 § 4A-404

*(b)* If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

**Remedies.**
GL c. 106 § 5-111

*(a)* If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

*(e)* Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

**Mental Health- provisions for competent interpreter services**
GL 123 § 23A
Any non-English speaker, who is denied appropriate acute psychiatric services by a hospital or separate unit of a hospital which provides acute psychiatric services by reason of the hospital’s not having exercised reasonable judgment in making competent interpreter services available, as required by this section, or the attorney general upon receiving written notice from a regulating state agency that such hospital is substantially failing to comply with applicable interpreter requirements, shall have a right of action in the superior court against such hospital for declaratory or injunctive relief. A non-English speaker bringing such action shall not be required to exhaust any administrative remedies that may be available to him and may be awarded damages for any actual harm suffered, but at least $250 in damages shall be awarded for each violation, together with such costs, including expert fees and attorney’s fees, as may be reasonably incurred in such action. Such action shall be brought within three years of any such failure to provide competent interpreter services.

**Regulation of Home Improvement Contractors - Consumer Claims Against Fund; Qualification; Limits on Awards from Fund; Payments Upon Depletion of Fund Monies**

**GL c. 142A § 7**

The fund administrator may not award: (1) more than ten thousand dollars or any amount necessary to compensate the owner for his actual loss, whichever is less to any one claimant or; (2) more than seventy-five thousand dollars to claimants on account of the conduct of any one registered contractor or subcontractor within a twelve month period, unless after the fund administrator has paid out said seventy-five thousand dollars the registrant has repaid the fund the full amount; provided, however, that it is within the discretion of the fund administrator to waive the limit with cause; or (3) any amount for consequential damages, except as may be allowed under section four, or for personal injury, punitive damages, attorney’s fees, court costs or interest.

**PUBLIC EMPLOYMENT – Rate of Wages**

**GL c. 149 § 27**

Any employee claiming to be aggrieved by a violation of this section may, at the expiration of ninety days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within three years of such violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and any damages incurred, including treble damages for any loss of wages and other benefits. Any employee so aggrieved and who prevails in such an action shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees.

**Employment and Training [Unemployment Insurance] - EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT**

**GL c 151A § 58A**

An employer shall not take any adverse action against an individual because the individual has reported such information to the department. Any employer who takes such adverse action shall be liable in a civil action, action for contempt or other appropriate proceeding to such employee for all wages and employment benefits lost by the employee as a result of such action, litigation costs and reasonable attorney fees.
Telemarketing Solicitation
GL c 159C § 8

(b) A person who has received more than 1 unsolicited telephonic sales call within a 12-month period by or on behalf of the same person or entity in violation of this chapter may: (i) bring an action to enjoin the violation; (2) bring an action to recover for actual monetary loss from such knowing violation or to receive not more than $5,000 in damages for such knowing violation, whichever is greater; or (iii) bring both such actions.

(c) In a civil proceeding resulting from a transaction involving a violation of this chapter, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall be awarded reasonable attorney's fees and costs from the nonprevailing party.

Insurance - POWERS AND DUTIES OF COMMISSIONER OF INSURANCE
GL c. 175 § 4

(17) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this section. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this section, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This section shall not abrogate or modify a common law or statutory privilege or immunity heretofore enjoyed by such person identified. Such person shall be entitled to an award of attorney's fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section if the party bringing the action was not justified in doing so. For purposes of this section a proceeding is justified if it had a reasonable basis in law or fact at the time it was initiated.

Health Insurance Consumer Protections
GL c. 1760 § 5

No contract between a carrier, including a dental or vision carrier, and a health, dental or vision care provider for the provision of services to insureds may require the provider to indemnify the carrier for any expenses and liabilities, including, without limitation, judgments, settlements, attorney's fees, court costs and any associated charges, incurred in connection with any claim or action brought against the carrier based on the carrier's management decisions, utilization review provisions or other policies, guidelines or actions.

Alienation of Land - DISCHARGE OF MORTGAGES
GL 183 § 54D

(e) A mortgagee, mortgage servicer or note holder who fails without reasonable cause to provide a timely payoff statement as required by this section shall be liable to the mortgagor, as that term is defined in section 54, for the greater of $500 or the
mortgagor's actual damages caused by the failure, plus reasonable attorney's fees and costs.

**TITLE TO REAL PROPERTY - Condominiums**
GL 183A § 6

(b) The unit owner shall be personally liable for all sums assessed for his share of the common expenses including late charges, fines, penalties, and interest assessed by the organization of unit owners and all costs of collection including attorneys' fees, costs, and charges.

**TITLE TO REAL PROPERTY - Real Estate Time-Shares**
GL 183B § 25

If the tort or breach of contract occurred during any period of developer control, the developer shall be subject to liability for all unreimbursed losses suffered by the association or time-share owners as a result, including costs and reasonable attorney's fees.

**TITLE TO REAL PROPERTY - Predatory Home Loan Practices**
GL 183C § 15

(b) Limited to amounts required to reduce or extinguish the borrower's liability under the high-cost home mortgage loan plus amounts required to recover costs, including reasonable attorneys' fees, a borrower acting only in an individual capacity may assert claims that the borrower could assert against a lender of the home loan against any subsequent holder or assignee of the home loan as follows:

**General Provisions Relative to Real Property - Proceedings Affecting Title to Realty Binding on Third Party; Memorandum of Lis Pendens; Contents, Recording, Endorsement by Court.**
GL 184 § 15

If the court allows the special motion to dismiss, it shall award the moving party costs and reasonable attorneys fees, including those incurred for the special motion, any motion to dissolve the memorandum of lis pendens, and any related discovery.

**Conservation, Preservation, Agricultural Preservation, Watershed Preservation and Affordable Housing Restrictions; Acquisition and Effect of Restrictions; Approvals and Releases, Etc.**
GL c. 184 § 32

Such conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions are interests in land and may be acquired by any governmental body or such charitable corporation or trust which has power to acquire interest in the land, in the same manner as it may acquire other interests in land. The restriction may be enforced by injunction or other proceeding, and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. If the court in any judicial enforcement proceeding, or the decision maker in any arbitration or other alternative dispute resolution enforcement proceeding, finds there has been a violation of the restriction or of any other restriction described in clause (c) of section 26 then, in addition to
any other relief ordered, the petitioner bringing the action or proceeding may be awarded reasonable **attorneys' fees** and costs incurred in the action proceeding.

**Tax Escalation Provisions in Leases; Return of Overcharge with Interest.**  
**GL c. 186 § 15C**

No lease relating residential real estate shall contain a provision which obligates a lessee to make payments to the lessor on account of an increased real estate tax levied during the term of the lease, unless such provision expressly sets forth (1) that the lessee shall be obligated to pay only that proportion of such increased tax as the unit leased by him bears to the whole of the real estate so taxed, (2) the exact percentage of any such increase which the lessee shall pay, and (3) that if the lessor obtains an abatement of the real estate tax levied on the whole of the real estate of which the unit leased by the lessee is a part, a proportionate share of such abatement, less reasonable **attorney's fees**, if any, shall be refunded to said lessee. Any provision of a lease in violation of the provisions of this section shall be deemed to be against public policy and void.

**Reprisals Against Tenants; Damages; Presumption; Waiver.**  
**GL c. 186 § 18**

Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises for the tenant’s act of, commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action is to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises; or exercising the tenant's rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four; or reporting to the board of health or, in the city of Boston to the commissioner of housing inspection or to any other board having as its objective the regulation of residential premises a violation or a suspected violation of any health or building code or of any other municipal by-law or ordinance, or state or federal law or regulation which has as its objective the regulation of residential premises; or reporting or complaining of such violation or suspected violation in writing to the landlord or to the agent of the landlord; or for organizing or joining a tenants' union or similar organization, or for making or expressing an intention to make, a payment of rent to an organization of unit owners pursuant to paragraph (c) of section six of chapter one hundred and eighty-three A shall be liable for damages which shall not be less than one month's rent or more than three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable **attorney's fees**.

**The Massachusetts Principal and Income Act - DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS**  
**GL c. 203D § 6**

(ii) paying from income or principal, in the fiduciary's discretion, **fees of attorneys**, accountants and fiduciaries, court costs and other expenses of administration, and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax, marital or charitable deduction only if the payment of those expenses from income will not cause the reduction or loss of the deduction; and
Divorce – Costs
GL c. 208 § 38

In any proceeding under this chapter, whether original or subsidiary, the court may, in its discretion, award costs and expenses, or either, to either party, whether or not the marital relation has terminated. In any case wherein costs and expenses, or either, may be awarded hereunder to a party, they may be awarded to his or her counsel, or may be apportioned between them.

Abuse prevention
GL c. 209A § 3
(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

Massachusetts Child Custody Jurisdiction Act
GL c. 209B § 7

(6) assess any or all of the costs of the custody proceeding in this state, having due regard for the purposes of this chapter, including the reasonable travel and other expenses of any party and his or her witnesses, the reasonable attorneys' fees of any party, the costs of the court's communications and information exchanges with other courts and the fees and costs of any person entitled to appear before the court as the representative of a child

Uniform Interstate Family Support Act - CIVIL PROVISIONS OF GENERAL APPLICATION
GL c. 209D § 3-313

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

Commission on Judicial Conduct
GL c. 211C § 7

(15) With the approval of the supreme judicial court, a judge shall be entitled to the payment of reasonable attorneys' fees by the commonwealth in any case where the matter is dismissed by the commission at any stage after the filing of a sworn complaint or statement of charges, where the supreme judicial court determines despite a commission recommendation for discipline that no sanction is justified, or where the supreme judicial court determines that justice will be served by the payment of such fees.
Actions for Contempt in Support Proceedings; Capias.
GL c. 215 § 34A

In entering a judgment of contempt for failure to comply with an order or judgment for monetary payment, there shall be a presumption that the plaintiff is entitled to receive from the defendant, in addition to the judgment on monetary arrears, all of his reasonable attorney's fees and expenses relating to the attempted resolution, initiation and prosecution of the complaint for contempt. The contempt judgment so entered shall include reasonable attorney's fees and expenses unless the probate judge enters specific findings that such attorney's fee and expenses shall not be paid by the defendant.

Sums Recovered Under §§ 1, 2, 2B or 5A Subject to Charges of Administration, Funeral Expenses, Costs, etc.
GL c. 229 § 6A

All sums recovered under section one, two, two B or five A shall, if and to the extent that the assets of the estate of the deceased shall be insufficient to satisfy the same, be subject to the charges of administration and funeral expenses of said estate, to all medical and hospital expenses necessitated by the injury which caused the death, to reasonable attorneys' fees and reasonable costs and expenses of suit incurred in such recovery.

Appeal of Decision on Motion for Costs and Counsel Fees.
GL c. 231 § 6G

Any party aggrieved by a decision on a motion pursuant to section six F may appeal as hereinafter provided. If the matter arises in the superior, land, housing or probate court, the appeal shall be to the single justice of the appeals court at the next sitting thereof. If the matter arises in the appeals court or before a single justice of the supreme judicial court, the appeal shall be to the full bench of the supreme judicial court. The court deciding the appeal shall review the finding and award, if any, appealed from as if it were initially deciding the matter, and may withdraw or amend any finding or reduce or rescind any award when in its judgment the facts so warrant.

Limitation on Attorney Fees.
GL c. 231 § 60I

Attorney fees for services rendered on behalf of a claimant or defendant in a medical negligence case shall be fair and reasonable. An attorney representing a claimant may charge a client a contingency fee, which shall be subject to the rules and guidelines of the supreme judicial court. No contingent fee agreement, shall be enforced, and no attorney shall recover a fee thereunder, as a result of services rendered in an action against a provider of health care for malpractice, negligence, error, omission, mistake, or the unauthorized rendering of professional services if, at the time of judgment, the court determines that the amount of the recovery paid or to be paid to the plaintiff, after deduction of the attorney's reasonable expenses and disbursements for which the plaintiff is liable and the amount of the attorney's fee, is less than the total amount of the plaintiff's unpaid past and future medical expenses included in the recovery, unless the contingent attorney's fee: (a) is twenty per cent or less of the plaintiff's recovery; (b) is reduced to twenty per cent or less of the plaintiff's recovery; or (c) is reduced to a level which permits the
or retained, or to the city for reasonable attorney's fees and costs as determined
by the court, plus liquidated damages in the amount of one hundred dollars, or not
more than three times the amount by which the payment or payments demanded,
accepted, received or retained exceed the maximum rent which could be lawfully
demanded, accepted, received or retained, whichever is the greater; provided that if
the defendant proves that the violation was neither willful nor the result of failure to
take practicable precautions against the occurrence of the violation, the amount of
such liquidated damages shall be the amount of the overcharge or overcharges.

Water and Sewage Collection, Treatment and Disposal Services within
Service Area on Exclusive Basis.

It is expressly contemplated by this act that the Authority, to the extent deemed by
it to be necessary and convenient to achieve its purposes under this act and under
such supervision from agencies of the commonwealth as is expressly authorized in
this act, shall provide water and sewage collection, treatment and disposal services
within its service area on an exclusive basis. It is intended that this section shall not
(i) diminish the powers or responsibilities of local bodies, (ii) override other
provisions of this act regulating the procedures for abandonment of local water
supplies, (iii) limit the lawful exercise of any local body, subject to applicable
approvals by the department of environmental protection and the water resources
commission, to continue to use any source of water used by it or to develop or
reactivate any source of water to be used by it, or (iv) impose responsibility on the
Authority for operation of the sewer and waterworks systems except as the Authority
is charged with responsibility or may elect to exercise responsibility under other
provisions of this act. In addition to and without limiting the generality of the
foregoing, said Authority shall be a "local government" insofar as concerns immunity
under sections (4), (4A) or (4C) of the Clayton Act; 15 U.S.C.A. §§ 15, 15A, and 15C
from damages, interest on damages, costs or attorneys fees for a local
government, for any official or employee thereof acting in an official capacity or for a
person against whom a claim is based on any official action directed by a local
government, or official or employee thereof acting in an official capacity.
APPENDIX 8

RESEARCH AND LITIGATION COMMITTEE
APPENDICES

STATISTICAL APPENDIX TO REPORT TO BOSTON BAR
ASSOCIATION TASK FORCE ON EXPANSION OF THE CIVIL
RIGHT TO COUNSEL, ON LEGAL REPRESENTATION IN PUBLIC
BENEFITS AGENCY HEARINGS

BY ALLAN RODGERS

JULY 1, 2008 DRAFT
Statistical Appendix to Report to Boston Bar Association
Task Force on Expansion of the Civil Right to Counsel,
On Legal Representation in Public Benefits Agency Hearings

We attempted to gather information on four aspects of the legal representation (whether by a lawyer or a nonlawyer) of low-income persons at administrative agency hearings held within the state on public benefits programs. These are:

- The percentage of these hearings in which the low-income person had representation
- A breakdown on whether the representation was by a lawyer or a nonlawyer
- The success rate in hearing decisions in cases where there was representation and in cases where there was no representation
- The number of court appeals from agency hearing decisions in these public benefits cases.

In some instances where we sought this information, we were told it was not available, such as data on Massachusetts hearings held by the Social Security Administration (SSA) and a breakdown between representation by a lawyer and by a nonlawyer at hearings at the Department of Transitional Assistance (DTA). We obtained some information from Mass. Legal Assistance Corp. on representation in these hearings by grantees in its Disability Benefits (DBP) and Medicare Advocacy (MAP) Projects and some information from several legal services programs. We also received some detailed information from DTA and the Board of Review (the state agency which handles administrative appeals in unemployment cases from adjudicatory hearing decisions of the Division of Unemployment Assistance (DUA)).

Nevertheless, the information which we have received enables us to draw some general conclusions about the numbers of hearings held each year, the comparatively small percentages of those hearings (except at SSA) at which low-income persons have representation, the more favorable results when people have representation and some data on the breakdown between lawyer and nonlawyer representation. Here are some data which we have received. Many thanks to those in legal services programs who helped us gather it.

1) The Number of Agency Hearings Held Annually - There are tens of many thousands of these agency hearings held each year.

   a) In unemployment cases, there are 22,916 agency hearings and 3,000 Board of Review appeals each year (projections based on March, 2008 statistics furnished by DUA).
b) The Department of Transitional Assistance held 7,098 hearings a year in TAFDC, EAEDC and Food Stamp cases (DTA figures for its most recent fiscal year).

c) Figures for SSA hearings in Massachusetts are not available, but it is estimated that many thousands are held each year.

d) In the MassHealth program, many thousands of requests for hearings are made, although a comparatively small percentage follow up on their appeals.

2) The Percentages of Hearings at Which the Low-Income Person is Represented

a) Legal services programs receiving DBP and MAP grants from MLAC provided representation in 464 appeals during the most recent grant year.

b) At Board of Review appeals in unemployment cases, two thirds of the appeals are by unemployment claimants. Fourteen percent of the claimants had representation (most by a lawyer) and 40% of the employers had representation (most by a nonlawyer agent).

c) At SSA Massachusetts hearings before an Administrative Law judge, legal services advocates estimate that 80% of the low-income people are represented.

d) At DTA hearings, around 10% have representation.

3) Lawyer v. Nonlawyer Representation - This varies widely, and probably it depends on what staff (lawyer, paralegal) legal services programs assign to these hearings. Some examples of this are:

a) At SSA, most legal services hearings are handled by paralegals, but program A handled 23 hearings during its most recent year, all by lawyers.

b) Program B handled 124 agency hearings during its most recent year, of which 92 were handled by lawyers and 32 by paralegals.

c) Program C handled 71 hearings during a recent year, and in 63 of these provided representation through a paralegal.

4) Success Rate When Representation is Provided - The Department of Transitional Assistance reports that during most years for which it has figures, there were the following results:

<table>
<thead>
<tr>
<th>Category of Benefits</th>
<th>% of Favorable Decisions - all Hearings</th>
<th>% of Favorable decisions, Where There was Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAFDC</td>
<td>27.6%</td>
<td>44.6%</td>
</tr>
<tr>
<td>EAEDC</td>
<td>49%</td>
<td>58%</td>
</tr>
<tr>
<td>Food Stamps</td>
<td>23%</td>
<td>34%</td>
</tr>
</tbody>
</table>
Appendix 9

Research and Litigation Committee Appendices

Costs of the Pilot Proposals

by Gerry Singsen
THE COSTS OF THE PILOT PROPOSALS

The Task Force Committees developed first approximations of the costs of carrying out their proposals. These estimates were based on the delivery system the pilot used and on other available data. For delivery systems using staff lawyers, the Committees consulted salary scales of legal services programs and relied on their own experience. For delivery systems that employ private attorneys appointed on a case-by-case basis (similar to CPCS bar advocates), the Committees used CPCS data which showed about $50/hour and 8 hours average for a bar advocate to handle a Rogers or CHINS hearing.

All proposals are presented as three year pilots in order to provide sufficient time to generate and evaluate reliable data. When funded, the proposals may vary from the estimates. The actual experience level of the attorneys hired, the salary schedules, benefit costs and overhead rates of a sponsoring agency and the going rate for bar advocates will replace the estimates.

The proposals' estimated annual costs are shown in Table I. The Immigration Impact Unit is treated separately because it is already operating as a CPCS unit with two attorneys; the Task Force proposal was to increase it from one attorney originally to four.

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>FIRST YEAR COST</th>
<th>SECOND YEAR COST</th>
<th>THIRD YEAR COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evictions</td>
<td>$350,000</td>
<td>$350,000</td>
<td>$350,000</td>
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<td>Custody</td>
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<td>Asylum</td>
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<td>$360,000</td>
<td>$360,000</td>
</tr>
<tr>
<td>Detainees</td>
<td>$360,000</td>
<td>$360,000</td>
<td>$360,000</td>
</tr>
<tr>
<td>Total new initiatives</td>
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<td>Immigration Impact Unit</td>
<td>$530,000</td>
<td>$530,000</td>
<td>$530,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,940,000</td>
<td>$2,940,000</td>
<td>$2,940,000</td>
</tr>
</tbody>
</table>
The proposals’ basic budget data is in Table II. In the table, an (A) before the attorney cost estimate indicates an assigned counsel component and an (S) indicates a staff component (attorneys except in the DYS Revocations pilot). The number of cases to be assigned or the number of staff is indicated parenthetically. Benefits are generally calculated for the purposes of this presentation at 30% of salaries. Basic non-personnel costs include general support staff costs and are generally estimated at one-quarter of the budget. Hourly rates for bar advocates are their total payments; there are no benefits or overhead costs for delivery by assigned counsel.

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>ATTORNEY COSTS</th>
<th>NON-PERSONNEL</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A or S</td>
<td>Salary</td>
<td>Benefits</td>
</tr>
<tr>
<td>Evictions</td>
<td>A(50)</td>
<td>$50,000</td>
<td>NA</td>
</tr>
<tr>
<td>Guardianship of Elders</td>
<td>A(295)</td>
<td>$118,000</td>
<td>NA</td>
</tr>
<tr>
<td>Civil Contempt</td>
<td>A(1034)</td>
<td>$620,000</td>
<td>NA</td>
</tr>
<tr>
<td>DYS Revocations</td>
<td>S(1)</td>
<td>$40,000</td>
<td>$14,000</td>
</tr>
<tr>
<td>School Exclusion</td>
<td>S(2)</td>
<td>$123,000</td>
<td>$37,000</td>
</tr>
<tr>
<td>Evictions</td>
<td>S(2.5)</td>
<td>$173,000</td>
<td>$52,000</td>
</tr>
<tr>
<td>Asylum</td>
<td>S(3)</td>
<td>$208,000</td>
<td>$62,000</td>
</tr>
<tr>
<td>Detainees</td>
<td>S(3)</td>
<td>$208,000</td>
<td>$62,000</td>
</tr>
<tr>
<td>Custody</td>
<td>S(3)</td>
<td>$208,000</td>
<td>$62,000</td>
</tr>
<tr>
<td>Immigration Impact Unit</td>
<td>S(4)</td>
<td>$277,000</td>
<td>$83,000</td>
</tr>
</tbody>
</table>