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The Profession

Greater Boston Legal Services Celebrates 125 Years

By Jacquelynne Bowman, Ana Cruz, David Kluft, and Lauren Shryne

This year marks the 125th anniversary of Greater Boston Legal Services ("GBLS"), which provides free civil legal aid to residents of Boston and beyond. A review of its history at its quasquicentennial reveals much about how the city's legal community has endeavored to answer a call to do justice for those in need of legal services, both then and now.

GBLS was founded in 1900 as the "Boston Legal Aid Society" ("BLAS") by fifteen members of the private bar and one philanthropist. Originally modeled after the German Legal Aid Society, which had been founded in New York in 1876, and following a similar organization in Chicago formed in the 1880s, BLAS was only the third legal aid organization in the United States. It was conceived to protect the rights of people living in poverty, focusing its limited resources on helping to meet the legal needs of immigrants and indigent women with children. Its first office, opened in 1910, was located at 39 Court Street in Scollay Square, near the current site of the Steaming Kettle in Government Center.

In 1914, Reginald Heber Smith became Chief Council of the Boston Legal Aid Society. Smith would later write *Justice and the Poor*, a seminal work that argued in favor of the provision of free legal aid to people who could not afford to pay for representation. Without the assistance of counsel to fight for equal access to justice, Smith wrote, "the system not only robs the poor of their only protection, but places in the hands of their oppressors the most powerful and ruthless weapon ever invented." Smith's work led directly to the 1920 creation of the American Bar Association's Standing Committee on Legal Aid and Indigent Defense, which is the ABA's oldest standing committee.

By the 1920s, the Boston Legal Aid Society was already handling approximately 4,000 client matters per year. Some of the early published appellate opinions involving BLAS clients included *The Mettacomet*, 233 F. 261 (1st Cir. 1916), in which Smith represented a cook on a fishing vessel who had been deprived of fair wages, and *In re Mathewson*, 227 Mass. 470 (1917), a Workmen's Compensation Act case before the Supreme Judicial Court. Perhaps the most notable early BLAS cases involved the representation of the victims of Charles Ponzi's infamous 1920 "Ponzi scheme." BLAS worked on that matter in collaboration with the Attorney General and served as a receiver in Ponzi's bankruptcy case.

In the following years, BLAS attorneys responded to emerging areas of legal need due to national and world events. For example, by 1944, World War II had caused an influx of soldiers requesting legal aid in the Boston area. Consequently, 15% of BLAS' caseload at that time consisted of legal services for veterans. *See* GBLS, *Centennial Report (1900-2000)*, 7 (2000).

In 1975, BLAS merged with the Boston Legal Aid Project (founded in 1964 as part of the "War on Poverty") to become Greater Boston Legal Services, and continued to prevail in important cases for its clients and people across the Commonwealth, including *Rogers v. Okin*, 634 F.2d 650 (1st Cir. 1980), which established the rights of psychiatric patients to make decisions about the course of their treatment, *Perez v. Boston Housing Authority*, 379 Mass. 703 (1980), which

led to major living improvements for the 10,000 families in Boston public housing, and *Massachusetts Coalition for the Homeless v. Secretary of Human Services*, 400 Mass. 806 (1987), which enforced the right of unhoused families to access shelters until they could find permanent housing. And in 1978, with key support from GBLS, the Legislature enacted the Abuse Prevention Act, G.L. c. 209A, which provided a statutory mechanism to survivors of domestic abuse to prohibit their abuser from further abuse or contact.

In 1996, GBLS made the critical decision to relinquish $1,400,000 in Legal Services Corporation (LSC) funding due to major restrictions on that funding imposed by Congress, including bans on class-action work, representation of immigrants, and advocacy with state and federal agencies. Because GBLS determined that the organization could not fulfill its mission if it adhered to these restrictions, it chose to withdraw from receipt of these federal funds. This loss resulted in GBLS closing neighborhood offices and being forced to reduce staffing by 20%.

With a focused commitment to the work that the community needed most, GBLS entered the 21st century with renewed vigor. GBLS continues to be shaped by its legal community partnerships, including with local bar associations, Boston's law firms and companies, and pro bono volunteers. Its key recent achievements reflect the breadth of its influence:

- GBLS clients prevailed in *Perlera v. Vining Disposal Service, Inc.*, 47 Mass. App. Ct. 491 (1999), securing higher wages and overtime pay for municipal workers.

- In 2006, GBLS settled the federal class action suit, *Daniels-Finegold v. Massachusetts Bay Transportation Authority*, No. 02-cv-11504, slip op. (D. Mass. July 25, 2002), resulting in improved access to public transportation for the 200,000 people with disabilities who live in the MBTA's service area, as well as improvements for all riders.

- In 2008, GBLS participated in the representation of 320 immigrant workers after an ICE raid at a New Bedford factory, preventing deportations and restoring $850,000 in unpaid wages.

- In 2009, GBLS represented the Boston Center for Independent Living ("BCIL") and several individuals with disabilities, reaching agreements with Massachusetts General Hospital and Brigham and Women's Hospital to remove accessibility barriers and ensure compliance with the Americans with Disabilities Act. The resulting Memorandum of Understanding improves access to Boston-area health care facilities for people with disabilities.

- In *U.S. Bank National Assoc. v. Ibañez*, 458 Mass. 637 (2011), GBLS attorneys challenged bank foreclosure rights, creating more safeguards for homeowners in the foreclosure process.

- In 2013, GBLS settled the landmark federal class action *Harper v. Department of Transitional Assistance*, No. 07-cv-2351, slip op. (D. Mass. Jan. 25, 2013), which increased access to benefits and services for persons with disabilities by improving readability and content of written notices and forms.

- In 2018, GBLS settled *S.A. et al. v. Boston Public Schools*, a Superior Court lawsuit that resulted in a change to school discipline policies to reduce suspensions, eliminate suspensions for very young children, and increase the use of non-exclusionary, alternative discipline. In the wake of the settlement, GBLS partnered with the Boston Bar Foundation and the BBA Public Interest Leadership Program to inform communities about their rights under the agreement.

- In 2023, GBLS settled *Garcia v. Department of Housing and Community Development*, No. SJC-12507, slip op. (Mass. Oct. 11, 2018), a Superior Court lawsuit that challenged the Commonwealth's failure to place eligible unhoused families in emergency assistance shelter promptly and to place families close to their home communities to decrease disruption to work, school, and community.

- In 2024, GBLS and co-counsel reached a settlement with the Commonwealth in a landmark disability rights federal class action suit, *Marsters v. Healey*, No. 22-cv-11715, slip op. (D. Mass. June 18, 2024), on behalf of tens of thousands of individuals with disabilities, which expanded opportunities for individuals residing in nursing facilities to receive the services they needed to live in their communities of choice.

- Also in 2024, GBLS and partners settled *Louis et al. v. SafeRent Solutions, LLC*, No. 22-cv-10800, slip op. (D. Mass. Nov. 20, 2024), a federal class action that alleged the use of unfair tenant screening measures in subsidized housing, resulting in a nationwide settlement that ended these practices.

In addition to litigation, GBLS advocacy was also instrumental in the passage of the Massachusetts Earned Sick Time Law (2014), the Massachusetts Criminal Justice Reform Act (2018), and the Paid Family Medical Leave Act (2018). And in 2024, GBLS' advocacy efforts in part led to the passage of Home Equity legislation that prevented municipalities and their private successors in interest from foreclosing on properties over small unpaid tax bills and keeping the difference between the taxes owed and the fair market value of the property.

In the early 20th century, when the Boston Legal Aid Society was founded, there was a debate about the purpose of the provision of free legal services to people who couldn't afford representation, as summarized by Professor Mark Spiegel in *The Boston Legal Aid Society: 1900-1925*, 9 Mass. Legal History 17-48 (2003). Professor Spiegel explained that some felt that "the primary goal of legal services should be substantive social justice," that is, services "aimed at alleviating poverty or changing specific social conditions." Others had a "procedural justice" view, seeing the goal of legal services as "providing a lawyer to facilitate access to court" because "access, by this standard, is an end in itself."

If the attorneys who founded BLAS did not adequately resolve this question, the GBLS of today has resoundingly pursued its mission with the goal of substantive justice. With a staff of nearly 100 attorneys and 30 paralegals, GBLS serves over 12,000 families and individuals annually, at no cost to clients, pushing for more just conditions and systems for clients and community members alike. The organization's work over the past 125 years demonstrates its commitment to justice for all.

Jacquelynne Bowman, Executive Director of GBLS, is a family law attorney with 25+ years of experience and has held leadership roles in the BBA and MBA. She was honored with the Voice of Change Award at the 2025 Boston Bar Association Beacon Awards.

Ana Cruz is the Chief Development Officer and Director of Communications for GBLS.

David Kluft is a member of the GBLS Board of Directors and an Assistant Bar Counsel with the Massachusetts Office of Bar Counsel.

Lauren Shryne is the Annual Giving Officer at GBLS and a graduate of Boston University School of Law.

Case Focus

The SJC Upholds State Effort to Increase Housing Production

By Karla Chaffee

More housing is needed in Massachusetts—222,000 homes, according to the first state-wide Comprehensive Housing Plan. The Supreme Judicial Court, in *Attorney General v. Town of Milton*, 495 Mass. 183 (2025), upheld as constitutional one legislative tool designed to address this state-wide housing crisis.

The decision has three primary holdings. First, Section 3A of the MBTA Communities Act, G.L. c. 40A, § 3A ("Section 3A" or the "Act") is enforceable and does not violate the separation of powers doctrine. Second, the Attorney General has the authority to enforce the Act through equitable remedies. Third, the agency-issued guidelines to determine an MBTA community's compliance with the Act constitute "regulations" under the Massachusetts Administrative Procedure Act ("APA"), G. L. c. 30A, and are unenforceable because they did not strictly comply with the APA's procedural requirements.

Milton answered several important questions about the Act and compliance with its requirements, which will help guide the 177 MBTA communities in Eastern Massachusetts in adopting Section-3A-compliant zoning districts. Given long-rooted ideals of home rule authority, communities such as Milton have instituted a barrage of legal attacks against Section 3A; so far none have been successful. Although land use and zoning have long been recognized as traditional areas of local concern, the SJC's *Milton* decision reminds us—consistent with decades of legal precedent related to the Regional Planning Act, G.L. c. 40B (the affordable-housing comprehensive permit statute)—that local control is limited when the Legislature determines that its exercise of state-wide authority is in the public interest.

Section 3A Basics

The Act amended the state Zoning Act, G.L. c. 40A and mandates zoning for multifamily housing in "MBTA Communities," as defined in G.L. c. 40A, § 1A. Section 3A provides in part:

> (a)(1) An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre . . . ; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

Subpart (b) states that as a penalty for non-compliance, communities that fail to adopt a compliant district are ineligible for grant funding from (i) the Housing Choice Initiative fund; (ii) the Local Capital Projects Fund; (iii) the MassWorks infrastructure program; and (iv) the HousingWorks infrastructure program. In practice, and now memorialized in 760 C.M.R. 72.09, compliance is considered before the award of all discretionary state grants. Subpart (c) requires

the Executive Office of Housing and Livable Communities ("HLC") to promulgate "guidelines" to determine if an MBTA community's zoning district is compliant with the Act.

As required by the Act, HLC adopted guidelines for community compliance. After publishing draft guidelines, HLC "conducted community presentations, and solicited feedback directly from affected communities . . . [and] also consulted with other agencies." *Milton*, 495 Mass. at 187. The detailed set of guidelines defines key terms in the Act, including what constitutes a "district of reasonable size," and categorizes communities based on the type of transit available and population size. The four community categories—Rapid Transit, Commuter Rail, Adjacent Small Town, and Adjacent Community—are designated with different compliance deadlines, and the guidelines also address district size and location, multi-family unit capacity, gross density, and other district parameters.

Background Leading to the Lawsuit

Milton initially took steps to comply with the Act, even applying for and receiving state grant money that it used to hire a consultant to design a zoning plan. *Id.* at 187. And at a special town meeting in December 2023, it voted to approve a zoning district that would have complied with the guidelines. *Id.* at 187-88. Shortly thereafter, however, a sufficient number of Town voters triggered a provision of the Town charter requiring the zoning district to undergo a Town-wide referendum vote. *Id.* at 188. Prior to the referendum vote, both HLC and the Attorney General sent letters to Milton, explaining the consequences of noncompliance and the likelihood that the Attorney General would take legal action. *Id.* But Milton's voters ultimately voted to reject the compliant zoning district. *Id.* A short time later, the Attorney General filed suit against Milton in the Single Justice session of the SJC; the case was then reserved and reported to the full Court.

Constitutionality of the Act

First, the Court considered whether the Act constituted an improper delegation of legislative power to HLC in violation of the separation-of-powers principles found in Article 30 of the Declaration of the Rights of the Inhabitatns of the Commonwealth of Massachusetts. Milton argued that the Legislature had improperly given HLC the authority to make "fundamental policy decisions," violating the principle that the Legislature may not delegate its authority to make laws. The Court, however, found the policy goals of the Act to be clear—each MBTA community must have a zoning district of reasonable size where multi-family housing is permitted as of right. The Legislature merely tasked HLC to implement the details of this policy, directing the agency to determine whether a municipality is in compliance. *Milton*, 495 Mass at 188-90.

Second, the parameters provided in the Act, such as unit density and district proximity to transit, sufficiently guided HLC's implementation of the statute. Third and finally, the Act provides safeguards against the agency's abuse of its delegated authority since it required HLC to consult with three different agencies in developing the guidelines and allowed for judicial review of the resulting rules. *Id.* at 190-91.

Attorney General's Enforcement Authority

Milton next argued that, because Section 3A includes an express penalty for noncompliance grant ineligibility, and the Act was silent regarding the Attorney General's right to bring an action for injunctive or similar relief, the Attorney General was not authorized to file a lawsuit to compel compliance with the Act. The Court disagreed, emphasizing the Attorney General's "broad powers to enforce the laws of the Commonwealth," including her statutory powers to

"take cognizance of all violations of law . . . affecting the general welfare of the people" and to institute "criminal or civil proceedings . . . as she may deem to be for the public interest," G.L. c. 12, § 10; and her "common law duty to represent the public interest and enforce public rights," which extends to matters concerning "land and property use." *Milton*, 495 Mass. at 191-92 (citations omitted). In response to Milton's argument that the Attorney General lacked enforcement authority because the Act did not specifically mention enforcement by the Attorney General, the Court held that "The Attorney General's enforcement power is not dependent on whether a particular statute happens to reference it." *Id.* at 192. Finally, the Court found that Milton's reading of the Act would frustrate the Legislative purpose. Municipalities, like Milton, would be free to ignore the Legislative mandate as long as they were willing to accept a potential fiscal loss. *Id.* at 192-93.

Validity of HLC Guidelines

Milton did prevail on the third issue, which consumed most of the oral argument before the Court. Although HLC was directed by the Legislature to adopt "guidelines" in the Act, the Court held that, given the broad definition of "regulation" in G.L. c. 30A, § 1, strict compliance with the procedural requirements of the APA was necessary.

The Court first observed the many ways that the detailed guidelines interpret and implement the Act, including: categorizing MBTA communities into four groups, defining a reasonably sized district for each community, determining the percentage of land that must be within 0.5 miles of a transit station, establishing deadlines for compliance, and determining the meaning of providing multi-family housing as of right. "Given the breadth, detail, substance, and mandatory requirements of the HLC guidelines in implementing the act," the Court rejected the argument that the guidelines should be excluded from the APA's definition of regulation, which extends to "the whole or part of every rule, regulation, standard, or other requirement of general application and future effect . . . adopted by an agency to implement or interpret the law enforced or administered by it." *Milton*, 495 Mass. at 194-95 (quoting G.L. c. 30A, § 1(5)).

The Court also rejected the Attorney General's argument that HLC's failure to file a notice of proposed regulation and a small business impact statement with the Secretary of the Commonwealth, as the APA requires, was a "harmless error." *Id.* at 195. In its briefing, the Attorney General pointed to the vast public input gathered during the creation of the guidelines, as well as HLC's collaboration with numerous other State agencies. Despite these steps, the Court held that "the APA leaves no room for substantial compliance"; instead "strict compliance" is "compelled by the plain terms of the statute." *Id.* (citing G.L. c. 30A, §§ 3, 5).

The Court therefore held that HLC's guidelines were "legally ineffective and must be repromulgated under G.L. c. 30A, § 3, before they may be enforced." *Id.* at 196.

HLC responded by repromulgating the guidelines, in substantially similar form but in accordance with the APA, first as emergency regulations under G.L. c. 30A, § 3, a mere six days after the SJC's decision; and then as final regulations after undergoing the required notice-and-comment procedures.

Section 3A is arguably the most impactful piece of zoning reform adopted in Massachusetts since the passage of Chapter 40B in 1969. By clarifying that the consequences of noncompliance exceed the loss of certain grant funds, *Milton* changed the debate in many MBTA communities. *Milton*'s lasting impact, however, may be a reaffirmation of the Legislature's power to set policy

on matters of state-wide importance, as well as the Attorney General's authority to enforce such policy, despite long-rooted notions of local control in matters of zoning and land use. Although *Milton* likely will not be the last word on the Act, the decision goes a long way toward clarifying for municipalities that compliance with the Act's requirements is not optional.

Karla Chaffee, an attorney at Nixon Peabody, was the lead author of an amicus brief filed on behalf of the Citizens' Housing and Planning Association (CHAPA) and nineteen co-signers in Attorney General v. Milton, 495 Mass. 183 (2025). Karla focuses her practice on land use permitting and real estate due diligence. She helps her clients maximize efficiency by charting a coordinated permitting strategy through a deal's lifecycle.

The Profession

The Social Law Library: An Illuminating Torch in Our Government of Laws

By Robert J. Brink, Executive Director

In 1804, the year when the Social Law Library convened its first annual meeting, John Adams wrote in his autobiography that as a young lawyer he had "suffered very much for the Want of Books."

Only 33 law books had been printed in America prior to 1776. There had been no Court Reports other than case summaries that practicing lawyers compiled themselves and sometimes shared with the bar, most notably Josiah Quincy, Jr.'s famous reports of the Massachusetts Superior Court of Judicature between 1761-1772.

Lawrence M. Friedman's *History of American Law* aptly characterized law in the colonial period as "the dark ages." After Independence, it darkened even more when Tory lawyers fled the country with their extensive personal libraries of imported English law books.

But discouragement quickly turned to delight when leaders of the Boston bar formed the Social Law Library (the "Library") in September, 1803 and, in October, dispatched an agent to London to facilitate the first of many shipments of English law books to build the Library's collection. In March, 1804, the Massachusetts Legislature authorized the very first official court Reporter in the United States. A month later, the Supreme Judicial Court provided space in its courthouse for the Library so that both the bench and bar could share the same vital research materials.

In only eight months, the legal community put in place the essential elements that finally enabled lawyers and judges to study the law fully and effectively placed Massachusetts at the forefront of what jurist and educator Roscoe Pound called the "Formative Era of American Law."

As the *Columbian Centinel & Massachusetts Federalist* reported, it was time to celebrate:

On Wednesday, [June 13,1804] the first annual meeting of this new institution was held at Concert Hall. The Proprietors [of the Social Law Library] afterwards partook of an elegant dinner, which was honored by the attendance of numerous and select Law Characters, Members of the Legislature, and Brethren of the Bar from various parts of the Commonwealth. The entertainment was enlivened by a number of songs, and with the flow of wit and conviviality.

Following these festivities, a former apprentice of Paul Revere engraved the Library's logo. It featured the eternal "Torch of Knowledge" to illustrate the Library's commitment to ensuring that the dark days of legal research would not return.

Today, the Social Law Library is perhaps the state's most enduring and successful public/private partnership. With the pooled resources from the private bar (via membership dues) and the public (via an annual appropriation), it is widely recognized as one of the most comprehensive law libraries in the nation.

Integral to Equal Justice

Located in Boston's John Adams Courthouse, with the Supreme Judicial Court and Appeals Court, the Library is officially designated by the U.S. Government Publishing Office as the Commonwealth's highest appellate court library. Trial Court personnel state-wide also have unfettered use of the Library's research services.

The Commonwealth's Executive and Legislative branches depend on the Library as well. A 2016 study by the Division of Capital Asset Management and Maintenance included the observation that there is an "unmistakable and increasing trend whereby the Social Law Library is serving as the central law library of Massachusetts government," noting that the number of Executive and Legislative branch entities that registered as members grew from 149 to 227 between FY2001 and FY2014.

Since then, the number of Executive and Legislative branch entities enrolled as members has grown to 256. Not counting all the routine queries to reference attorneys, usage logs tallied for the last annual count document that they used the Library 18,245 times—an average of 73 times every business day.

Registered users include the Office of the Governor, plus all eleven Executive Offices and a substantial majority of their 99 Departments, Divisions, Boards, and Bureaus, etc. The staffs of other Constitutional Officers also utilize the Library, such as those from the Secretary of the Commonwealth, the Auditor, the Treasurer, and, of course, the Attorney General.

Executive Branch users also include independent agencies that are well-known to the public, such as the Cannabis Control Commission, the Gaming Commission, the State Lottery, and the Health Connector.

The Legislature, too, relies on the Library. Counsels to both the House and Senate make use of the Library, as do various legislative committees, as well as numerous legislators and their staffs.

Dues-paying members from every segment of the private bar also value the services provided by the Library. Dozens of large firms listed in the AmLaw 100 and 200 are frequent users. Solo practitioners and smaller firms from 282 municipalities beyond Boston represent a sizable proportion of active members.

Similarly, legal services organizations throughout Massachusetts benefit from the Library's courtesy memberships. They include major providers like Greater Boston Legal Services, MetroWest Legal Services, South Coastal Counties Legal Services, and the BBA's Volunteer Legal Project. Other law-related nonprofits receive free memberships, such as the American Civil Liberties Union, the New England Innocence Project, the Massachusetts Law Reform Institute, GLBTQ Legal Advocates & Defenders, the New England Legal Foundation, and scores more.

The Library's pro bono membership policy helps put public-interest organizations on "equal footing" with the state's top-notch firms and government offices. Such equal access to premier research resources is integral to equal justice.

Comprehensive and Cutting-Edge Collection

If John Adams were practicing law today, he would not suffer for the want of books. Library members have access to nearly 600,000 volumes of practice materials for federal law and all 50 states (with an emphasis on Massachusetts), as well as international law. They also have 24/7 access to "e-Books" on hundreds of topics published by LexisNexis/Matthew Bender, WEST Academic, Law.com's Law Journal Press, Nolo Legal Guides, and others.

Members can search 77 research databases, such as those published by Westlaw, Bloomberg Law, vLex Fastcase, VitalLaw, and AILALink—the increasingly relevant research platform of the American Immigration Lawyers Association.

To supplement such commercial products, the Library self-publishes research databases of Massachusetts primary and administrative law. These offerings include decisions of the Superior Court (including the Business Litigation Session), the Housing and Land Courts, plus the Appellate Decisions of the District Court and the Boston Municipal Court. There are also decisions from dozens of administrative agencies, such as Massachusetts Commission Against Discrimination, Division of Administrative Law Appeals, and Contributory Retirement Appeal Board.

Several new databases deserve mention, such as the decisions of the Massachusetts Peace Officers Standards and Training Commission, commonly known as POST. The Library also recently partnered with LLMC-Digital to publish fully searchable databases of the entire 3rd Edition of the *Code of Massachusetts Regulations* (1987 to present) and its complement, the *Massachusetts Register.*

Reference and Research Services

Given the size, scope, and sophistication of the Library's physical and digital collections, the Library's Reference Attorneys work closely with all members when called on to refine issues, develop research strategies, and utilize the most suitable practice materials for their research projects. They also provide trainings tailored to the specific needs and practice areas of firms and government entities to help them make the most of the Library’s collection and services.

Compliant with copyright laws and publisher restrictions, the Library's Document Delivery Service copies and delivers items from all physical and digital formats in the collection to members working off-site.

The Reference Attorneys provide various research services such as "bill tracking" that keeps patrons abreast of specific bills progressing through the Massachusetts legislative process. They can search trial dockets in 44 states (and Washington D.C.) to provide members useful status reports on cases and insights about judges and opposing counsel.

Members themselves can subscribe to email alerts for Massachusetts Judicial Assignments, Slip Opinions of the SJC and Appeals Court, new decisions of the Superior Court's Business Litigation Session, as well as reports when notices are posted on the Massachusetts House and Senate Journals. For members interested in keeping abreast of new developments in their fields, the Library also offers timely title alerts for articles in more than 100 legal journals and new treatise alerts for 45 practice-specific categories.

Making Adams's Constitutional Ideal a Reality

Since 1803, the Social Law Library has indeed been a torch of knowledge to help make real the ideal that John Adams penned into the Massachusetts Constitution of 1780 that we "may be a government of laws and not of men."

For more information, consult the Library's website at www.socialaw.com or contact the membership department at 617-226-1530.

Robert J. Brink, Esq., has served as Executive Director of the Social Law Library since 1998 and before that was the CEO of the Flaschner Judicial Institute.

Heads Up

Fresh Start for Renters: New Massachusetts Law Lets Tenants Seal Eviction Records

By Ana Rivera

I. Introduction

Six years after the first eviction record sealing bill was filed in Massachusetts, in August, 2024, Governor Maura Healey signed into law a process for sealing eviction records as part of the Commonwealth's Affordable Housing Act. By doing so, Massachusetts joined 19 other states and municipalities around the country in approving a law that allows tenants to seal their eviction records. *Mapping the Growth of Eviction Record and Tenant Screening Protections*, Policy Link (May 2025). The law, codified as G.L. c. 239, § 16, became effective on May 5, 2025, with strong support from state leaders, housing advocates, and tenant advocacy organizations. Molly Farrar, *Thanks to the new law, you can now seal your eviction record in Mass.*, Boston.com (May 6, 2025).

II. Eviction Records Create Lasting Barriers to Housing

The inclusion of an eviction record sealing provision in the Affordable Housing Act was an important win for tenants in the fight for housing justice. The filing of an eviction case against a tenant is publicly available information. It is well-recognized that "the mere record of an eviction proceeding can serve as a long-term barrier to a tenant when he or she seeks future housing, regardless of the legal outcome." *Rental Prop. Mgmt. Servs. v. Hatcher*, 479 Mass. 542, 554 (2018). It becomes, in effect, a "Scarlet E" for tenants. *See* Larisa G. Bowman, *Eviction Abolition*, 55 LOY. U. CHI. L.J. 541, 573-74, n.155 (Spring 2024).

It is the norm for landlords and tenant screening companies to cull and use public data to screen tenant applications and to deny housing opportunities based on an eviction record, regardless of the merits of the underlying eviction case or even the accuracy of the data. *See id.* at 574, n.155-56. *See also* Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, CLEARINGHOUSE REV. (2017). This norm restricts social mobility for tenants with prior eviction records. With restricted mobility, the denial of these housing opportunities also impacts job and educational opportunities. *See* Bowman, *Eviction Abolition*, *supra* at 574-75. Ultimately, the effects fall disproportionately on people of color; Black renters in Massachusetts are almost 2.5 times as likely as white renters to have an eviction record, with an even wider margin of disproportion for Black women in particular. Sophie Beiers, Sandra Park, & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU Analytics, Jan. 10, 2020. The new eviction record sealing law goes a long way toward bridging social, racial, and economic justice gaps.

III. How Does the Eviction Sealing Process Work?

Like many laws, this new law has its complexities and the categories of eligibility for eviction record sealing can seem layered and nuanced. (A chart published by the Massachusetts Law Reform Institute deconstructs the components of the law and can be found here.) In simplified

fashion, the law operates to allow eligible tenants to petition the trial court to seal the record of their eviction case(s). Eviction records may be administratively sealed upon the filing of the petition for sealing in all cases that resulted in a dismissal and all cases that concluded with a judgment entered in favor of the tenant. Summary process for possession of land (eviction), G.L. c. 239, § 16(e1/2). For these cases, the petition to seal may be filed immediately after the conclusion of the case and the exhaustion of appeal rights, with no hearing required. *Id*.

For eviction cases that were not dismissed or where judgment did not enter in favor of the tenant, the eviction records are not administratively sealed. For these cases, the parameters of the sealing process are governed by two considerations.

- The first consideration is procedural: the tenant petitioning for sealing must first similarly wait until the conclusion of the case and exhaustion of appeal rights. Then, additionally, the tenant must provide notice to the original parties in the action, and those parties are allowed a seven-day objection period ("notice period") under the statute. With one exception noted below, if no objection is made by any party during the objection period, the petition to seal the eviction record may be processed by the court with no hearing.
- The second consideration is substantive: the *reason* the eviction case was filed will affect how and when the eviction record gets sealed.

For example, if the reason for the eviction was "no fault"—in other words, the case was brought for reasons other than anything the tenant did or failed to do, such as for economic or business considerations by the landlord—then after the requisite notice period, the court may process the petition and approve it without a hearing. G.L. c. 239, § 16(a)-(b). For eviction cases that are filed for reasons other than "no fault," tenants may be required to make additional showings to have their eviction record(s) sealed. By way of further example, in eviction cases filed for non-payment of rent, a tenant may seek to seal their eviction record by first demonstrating to the court that any money judgment was satisfied. G.L. c. 239, § 16(k). Once the tenant demonstrates this, they may then file their petition to seal.

In non-payment of rent cases where the money judgment is not satisfied, a tenant must wait a minimum of four years after conclusion of the case and exhaustion of appeals rights to file their petition to seal. In these cases, to get their eviction record sealed, the tenant must certify two things: first, that the non-payment of rent (as determined by the money judgment) was due to economic hardship; and, second, that no other non-payment eviction action or "lessor action" was brought against the tenant in the intervening four years. G.L. c. 239, § 16(c) (A "lessor action" is one in which a tenant sues an owner/manager of property for breach of the implied warranty of habitability, breach of a rental agreement, or violation of any other law. Although unlikely that a tenant would become an owner/manager in the intervening years and be the subject of such a suit, the remote eventuality is addressed by the statute.). If, during the requisite notice period, a party objects, the court is required to conduct a hearing and may require the tenant to submit a financial statement. *Id*. If the eviction case was brought for "fault"—typically due to alleged lease violations or allegations of some other misconduct or omission on the part of the tenant (other than non-payment of rent)—the tenant must wait a minimum of seven years after conclusion of the case and exhaustion of appeals rights to file their petition to seal. G.L. c.

239, § 16(d). The tenant is required to demonstrate that no other "fault" eviction or "lessor action" was filed against them in the intervening seven years. *Id.*

Finally, there is a category of actions against tenants that are not filed as summary process (eviction) actions but rather, as civil actions brought under M.G.L. c. 139 § 19, that can result in a speedy eviction. These actions typically involve allegations that the tenant engaged in specific criminal conduct. *See generally* Common Nuisances Act, G.L. c. 139, § 19. When a judgment enters in favor of the landlord in these cases, the tenant must wait a minimum of seven years before filing a petition to seal their eviction record, and must demonstrate that, in the intervening seven years, no other G.L. c. 139 § 19 or fault eviction case was brought against them and they were not convicted of any crime(s) listed in G.L. c. 139 § 19. A hearing is required for these petitions to allow the judge to make specific findings that the sealing will serve the interests of "justice and public safety." G.L. c. 239, § 16(3). Where a landlord does not obtain a judgment in a G.L. c. 139 § 19 case, the tenant may file a petition to seal immediately after the conclusion of the case and the exhaustion of appeal rights but must give notice to the original parties in the action. *Id.*

The eviction record sealing law helps tenants with important financial considerations beyond the sealing itself. Once an eviction record is sealed, consumer reporting agencies are required, within 30 days, to remove the information from the tenant's consumer report and from the calculation of any credit score or recommendation. G.L. c. 239, § 16(i). This requirement is enforceable by the Attorney General, with potential damages, costs, and attorney's fees payable to the tenant where the consumer reporting agency fails to do so. *Id*. In addition, applications for housing or credit that seek information on prior evictions must have a statement that an applicant may accurately respond "no record" in cases where the eviction record has been sealed. G.L. c. 239, § 16(j).

IV. Resources Available to Tenants

Tenants may prepare and file their own petitions to seal, and training materials for both legal and non-legal advocates are available so that they may help to guide and advise tenants who seek assistance. MLRI et al., *Eviction Record Sealing in Massachusetts (2025)*, MassLegal Services (May 19, 2025). In addition, the Suffolk University Law School Legal Innovation & Technology Lab, in collaboration with the Massachusetts Trial Court, recently created a digital tool called the "Guided Interview" to help with the petition process. Sam Glover, *New eviction sealing tool launched, developed with the Massachusetts Trial Court!*, Legal Innovation & Technology Lab, Suffolk University Law School (May 13, 2025). The tool is a "smart" online program that determines a tenant's eligibility to seal by taking into account the case outcomes and the reasons for the eviction. If the program deems the tenant eligible, it prompts tenants for the information needed to successfully produce fully completed eviction record sealing petitions. (Tenants and/or their advocates can find resources at https://www.mass.gov/info-details/sealing-eviction-court-records and frequently asked questions are answered here: https://www.masslegalhelp.org/housing-apartments-shelter/eviction-sealing.) Public computers are available at Court Service Centers and Trial Court Law Libraries to provide information and access to PDF versions of the eviction record sealing petition, and paper forms can be found at the various courthouses. *Sealing eviction court records*, Mass.gov. Legal services organizations,

with community partners and pro bono lawyers, also organize eviction sealing "clinics" to help tenants with the process.

V. Conclusion

Massachusetts's new eviction record sealing law marks a critical step toward dismantling long-standing housing barriers. By giving tenants the ability to clear their records, the law helps expand access to housing and addresses broader social, racial, and economic inequities that have long been the consequences of the eviction process.

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Point/Counterpoint

Headline – A Life RAFT or Just Treading Water?: Eviction Assistance Program Applications in Summary Process Actions

Vladimir L. Nechev and David A. Brown

Introduction

When residential tenants do not prevail in summary process actions, they and their families face eviction and its myriad related harms. In a time of widespread housing unaffordability and instability, the aggregate impact of evictions pose severe challenges for the Commonwealth as a whole. With the goal of ameliorating the various effects of these displacements, the Legislature created several rental assistance programs, including Rental Assistance for Families in Transition ("RAFT") and HomeBase, which are designed to deliver payment of rental arrears, and, in certain cases, future rental payments, directly to landlords to incentivize them to forego evictions and preserve tenancies.

Unfortunately, the process of accessing these programs can take time, and such delays can cause direct tension with a residential housing court eviction process that is intended to be, as its name suggests, "summary." Recognizing the conflict between the important policy goal of preventing homelessness and the goal of resolving eviction disputes through timely court proceedings, in July 2023, the Legislature enacted G.L. c. 239, § 15 ("Section 15") mandating a pause in certain eviction actions to accommodate tenants' applications for housing assistance programs. While the language of Section 15 appears simple, there is an active debate as to whether the pause is mandatory and whether it conflicts with another portion of the statute, G.L. c. 239, § 3 ("Section 3"), which describes landlords' rights. Section 3, which had been enacted in July 2021, gives landlords a choice: they may either agree to accept full payment to end the eviction action, or they may refuse payment and recover possession of the rental property. The tension with Section 15 has arisen because even when landlords have opted not to accept full payment, courts have still granted tenants stays during the pendency of assistance applications—leading landlords to ask whether an application is made in good faith if the tenant is already aware that the landlord will not be accepting any payment assistance that the tenant is ultimately awarded. This article presents two contrasting views of the requirements of Section 15 in light of the rights granted landlords in Section 3.

A Clear Mandate for a Pause in Proceedings

David A. Brown

The language of Section 15 is not discretionary and is not in conflict with Section 3. The Legislature spoke clearly when it provided that a court "shall" . . . "(i) grant a continuance; . . . (ii) issue a stay of execution; and (iii) not enter judgment or issue an execution" while there is a pending application for rental assistance. Summary Process for Possession of Land Act, G.L. c. 239, § 15(b). There are no exceptions to the stay, nor can any be read into its clear language. As the Supreme Judicial Court recently explained, "the Legislature's use of the word 'shall' reflects the imposition of a nondiscretionary, mandatory obligation." *Garcia v. Exec. Off. of Hous. & Livable Communities*, 495 Mass. 86, 91 (2024) (enforcing a mandate that the state provide emergency shelter to seemingly eligible families). This is consistent with the statutory construction axiom that "the word 'shall' is an imperative." *Perez v. Dep't of State Police*, 491 Mass 474, 486 (2023).

Enforcement of this mandatory pause is not in conflict with Section 3 and does not produce an absurd result. *See, e.g., Sch. Comm. of Newton v. Newton Sch. Custodians Ass'n*, 438 Mass. 739, 750-51 (2003) ("In the absence of explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other."). The two provisions are directed at two distinct subjects: Section 15 is directed at and clarifies an obligation of the court (i.e., to issue a stay until a decision on the rental assistance application); by contrast, Section 3 is directed at and clarifies the obligations of a landlord-plaintiff in a non-payment summary process action (i.e., that the plaintiff need not ultimately accept the funds). Both propositions can coexist in harmony: a landlord need not accept rental assistance after judgment in a non-payment case; however, the landlord may not proceed with removing the tenant from the property until the rental assistance application is decided.

Even if there were a conflict, Section 15 would still control because it was enacted after Section 3. *See Boston Hous. Auth. v. Lab. Rels. Comm'n*, 398 Mass. 715, 718 (1986) (later-enacted legislation supersedes earlier legislation). And the legislative history of Section 15 makes clear that in passing Section 15 more than three years after enacting an earlier version, Chapter 257 of the Acts of 2020 ("An Act Providing for Eviction Protection During the COVID-19 Pandemic Emergency")—which first permitted stays pending rental assistance applications—it was aware of landlords' frustration with delays caused by the rental assistant application process, but nonetheless chose to retain in Section 15 the mandatory "shall" language without limitation or qualification. This was a recognition of a somber reality: the Commonwealth continues to face a crisis of widespread housing instability. Between 2022 and 2023, the total homeless population in Massachusetts increased by 23.4%, and family homelessness increased by 29.1%. *See* U.S. Department of Housing and Urban Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, 44-45 (2023).

Housing costs are skyrocketing and the state is devoting an ever-increasing amount of funds toward shelter expenses. Appropriations for the Emergency Assistance Family Shelter system in fiscal year 2024 were more than 4½ times those for fiscal year 2021. Chris Lisinski, Colin A. Young, & Michael P. Norton, "*Massachusetts legislators approve more shelter funding, new limits*," New England Public Media, (Apr. 25, 2024); *see also, e.g.*, Karen Bobadilla & William Lonn, *Preserving Massachusetts' Right to Shelter in the Context of Increased Migration*, 69.1 Bos. Bar J. 14, 15 (Winter 2025). In response to the crisis, the Legislature intentionally created a temporary pause in the displacement process and sought to incentivize landlords to maintain the tenancies of individuals who had fallen behind in their rent, even in scenarios where the landlord has already obtained a judgment for possession.

Disagreement has also arisen as to whether a tenant is entitled to a continuance in the context of what some have called "serial filing" of rental assistant applications. Some landlord advocates have suggested that no pause should apply in the case of serial tenant filings because such applications are not "made in good faith." But the legislative history of the statute demonstrates that this "good faith" requirement was intentionally excluded from the law. State Senator Lydia Edwards (D-Third Suffolk) proposed, and the Senate ratified, an amendment adding the clause "made in good faith" after the word "application," but that language was specifically removed by the Conference Committee and not included in the final bill, clearly evidencing an intent by the Legislature not to impose that requirement and instead maintain a stay provision that is as broad as possible. *See Proposed Amendment 176 to Section 35 of budget proposal*, Massachusetts Senate Journal, May 23, 2023.

The mandatory nature of this statutory stay and the lack of conflict between these statutes was recently affirmed by *92 Grand St. Commons, LLC v. Oliveras*, No. 25-J-0064, slip op. (App. Ct. Feb. 10, 2025), in which a Single Justice held that "while the plaintiff is not required to accept the rental assistance funds and reinstate the defendant's tenancy, § 15 nonetheless requires the issuance of stay 'if the [statutory] requirements are met.'" *Id.* at 4 (finding that Section 15 requires a stay of execution where there is a pending rental assistance application notwithstanding that a judgment had already entered). *See also Isabayo v. Cariglia*, No. 25-J-335, slip op. (App. Ct. May 12, 2025) (granting stay due to pending application); *Fakhory v. Brozowski*, No. 25-J-327, slip op. (App. Ct. May 14, 2025) (same). The harmonization of these two provisions makes clear that a stay should occur in such circumstances to achieve the Legislature's goal.

When Statutes Meet Reality: An Unworkable Conflict

Vladimir L. Nechev

While there may be no direct textual conflict between Sections 3 and 15 of G.L. c. 239, these sections, when read together, create a conflict in their practical application that courts cannot ignore. The plain language of Section 15, considered in isolation, suggests a clear mandate: if there is a pending rental assistance application, the court shall neither issue the execution nor enter judgment (depending on the stage of litigation) and shall grant a continuance at its discretion. While reading this section on its own would suggest that a tenant is permitted an unlimited number of continuances based on repetitive rental assistance applications, such an outcome would create an untenable result that is not in accord with other portions of the same statute and undermines the intention of the Legislature. Massachusetts case law is clear that sections of the same chapter must be "interpreted so as to constitute an harmonious and consistent body of laws." *See Johnson v. Johnson*, 425 Mass. 693, 696 (1997).

As such, Section 15 must be read in harmony with other sections of Chapter 239, specifically, Section 3, which states that a landlord shall not be required to accept payment from a tenant even if that payment represents full satisfaction of the judgment. Even if the plain language of Section 15 seems to allow unlimited continuances or delays so long as there is a pending rental assistance application, the countervailing language of Section 3 of the same statute appears to limit these continuances, as a landlord is not required to accept funds to cure the rental balance post-judgment. Reading these two sections together limits a post-judgment continuance or stay due to a pending rental assistance application to situations where a landlord is willing to participate in the application, as landlord participation is required for a rental assistance application to be approved. This makes sense: tenants should not be permitted to apply for funding that landlords have stated they will not accept; landlords who chose to simply recover possession under Section 3 should not be made to wait for the resolution of an application that will not continue the tenancy.

To add to the interplay between Section 3 and Section 15, recent Appeals Court rulings seem to suggest that a stay under Section 15 is limited to the one rental assistance application pending when the stay was requested. *See 92 Grand Street Commons, LLC*, No. 2025-J-0064 (holding that "[t]o the extent the defendant seeks to stay this matter further while awaiting decisions on her appeal from the denial of that application and the additional applications she has filed, such request requires an interpretation of the statute that, as the Housing Court judge recognized, would result in an unworkable and prolonged delay"). Allowing a tenant to submit an unlimited number of rental assistance applications, and appeals thereof, and request unlimited stays under Section 15 essentially forces the landlord to forfeit possession indefinitely, resulting in severe prejudice and irreparable loss. *Id.* Such a result would have the effect of severely undermining the Summary Process Rules and Chapter 239, both of which contemplate expeditious

proceedings that recognize property owners' interests while providing protections for tenants. Unlimited stays simply create an unjust result for landlords.

Reading these two statutes together makes clear that the Legislature enacted Section 15 in part because it was aware that a sister provision, Section 3, was a *de facto* pre-existing backstop. Courts should adopt this straightforward interpretation and avoid an absurd result that would reward perpetual, and even bad faith, applications. Doing otherwise would have the perverse incentive of rewarding unmeritorious applications to already overburdened housing programs, reducing the resources for agencies to support meritorious applications and further overburdening the housing system's administrative functions—a result that certainly is not what the Legislature intended.

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Case Focus

Headline – To Appeal Or Not To Appeal: SJC Clarifies The Potential Catch-22

Alessandra Wingerter

In *H1 Lincoln, Inc. v. S. Washington St., LLC (H1 Lincoln, Inc. I)*, 495 Mass. 484 (2025), the Supreme Judicial Court ("SJC") held as a matter of first impression that a judgment debtor's payment in full of a judgment both satisfies the statutory requirement of interest *and* terminates the accrual of post-judgment interest, even if the judgment debtor continues to pursue its appellate rights. Going forward, this decision may markedly change the calculus for parties deciding whether to appeal, given Massachusetts's statutory 12% post-judgment interest, which can factor prominently into such decisions. *See generally* Phillip A. O'Connell, Jr. & Tony K. Lu, *The Interesting Implications of the Massachusetts Interest Statutes*, 67.4 Bos. Bar. J. 6, 7 (Fall 2023).

Background

The underlying dispute in *H1 Lincoln, Inc.* concerned the lease of a commercial property. Plaintiff, H1 Lincoln, Inc. ("Lincoln"), a car dealership, entered into a commercial lease with the Defendants to lease two adjacent parcels in North Attleborough that Lincoln intended to develop and operate. After Lincoln claimed that the Defendants engaged in a "prolonged scheme of commercial extortion" to extract additional concessions, Lincoln brought claims of breach of contract, breach of implied covenant of good faith and fair dealing, and Chapter 93A violations. *H1 Lincoln, Inc. v. S. Washington St., LLC (H1 Lincoln, Inc. II)*, 104 Mass. App. Ct. 256, 258 (2024).

The litigation included multiple trials, spanning over eight years. Ultimately, Lincoln prevailed, and judgment entered in its favor for just over $20 million, with post-judgment interest running at a per diem rate of $4,910.98. *H1 Lincoln, Inc. I*, 495 Mass. at 485. The judgment provided that "[s]hould the Defendants seek to reserve any rights or encumber any payment made in satisfaction of the judgment, such conditional payments shall not constitute full satisfaction of the judgment." *Id.* at 485-86.

Subsequently, the Defendants paid the full monetary judgment noting that the "payment [was] made without waiver of any of the Defendants' appellate rights." *Id.* at 486. Thereafter, the Defendants appealed four post-judgment orders, which included a challenge to the accrual of post-judgment interest even after they paid the judgment in full. The Appeals Court affirmed the post-judgment orders, *H1 Lincoln Inc. II*, 104 Mass. App. Ct. at 263-67, and the Defendants sought further appellate review. The SJC granted review, limited to the post-judgment interest issue. *H1 Lincoln Inc. I*, 495 Mass. at 486.

The Decision

The question before the SJC was whether, under the Judgement and Execution Act, G.L. c. 235, § 8, payment of the entire judgment terminates the accrual of post-judgment interest or whether the exercise of appellate rights constitutes a condition on the payment and, therefore, requires the continuing accrual of interest. Answering that question, the SJC held that exercising appellate

rights does not constitute a condition on full payment of the judgment and, therefore, the judgment was satisfied. *H1 Lincoln, Inc. I*, 495 Mass. at 490.

Prior to *H1 Lincoln, Inc.*, the SJC had answered a slightly different question in *Governo Law Firm LLC v. Bergeron*, 487 Mass. 188 (2021). In *Governo Law Firm LLC*, the SJC held that post-judgment interest continues to accrue until the judgment is "fully" satisfied, and that conditional payments—including one contingent on a party waiving its appellate rights—do not constitute full satisfaction of a judgment. *Id.* at 201-202. There, the Defendants (who had generally lost, but stood to lose even more on appeal) offered to deposit the judgment with the court pursuant to Mass. R. Civ. P. 67 during the pendency of the appeal—but also offered to release the judgment payment immediately if the plaintiff did not appeal. Basing its ruling on Rule 67, which does not provide an escape hatch for post-judgment interest, the Court ruled that "until that judgment is satisfied, post-judgment interest will continue to accrue." *Id.* at 202.

Although the underlying issues appear similar, the SJC refined the question in *H1 Lincoln, Inc*., not only substantively, but also distinguished it as to the standard of review. Below, in *H1 Lincoln, Inc*., the Appeals Court had reviewed the decision regarding the termination of the accrual of post judgment interest for abuse of discretion, relying on *Commerce Ins. Co. v. Szafarowicz*, 483 Mass. 247 (2019), as well as *Governo Law Firm LLC*. The SJC found significant that both *Commerce Ins. Co.* and *Governo Law Firm LLC* reviewed a ruling on a Rule 67 motion to deposit funds with the court. The SJC, however, noted that ruling on a motion to deposit funds "is materially different" from the question of law at hand here: whether a payment satisfied a judgment, thus terminating the accrual of post-judgment interest under G.L. c. 235, § 8. *H1 Lincoln, Inc. I*, 495 Mass. at 487. The SJC held that the Appeals Court's conclusion that Lincoln's payment in full of the judgment did not terminate the accrual of post-judgment interest was a legal conclusion subject to *de novo* review.

After addressing the standard of review, the SJC turned to the substantive question at hand: whether, under G.L. c. 235, § 8, payment of the entire judgment terminates the accrual of post-judgment interest or whether the exercise of appellate rights constitutes a condition on the payment and, therefore, requires the continuing accrual of interest. G.L. c. 235, § 8 states, "[e]very judgment for the payment of money shall bear interest from the day of its entry at the same rate per annum as provided for prejudgment interest in such award, report, verdict or finding." Mass. R. Civ. P. 54(f) further specifies that judgments "shall bear interest up to the date of payment of said judgment."

Because the language of G.L. c. 235, § 8 does not squarely address whether a payment in full by a judgment debtor who intends to appeal is a conditional payment, the SJC turned to its statutory purpose. The Court identified that the purpose of the statute is to "compensate the prevailing party 'for loss of the use of money when damages are not paid on time'" and that it is not intended to discourage appeals. *H1 Lincoln, Inc. I*, 495 Mass. at 488. The SJC stressed that, "[t]he right to appeal is an important and necessary part of the litigation process designed to ensure that errors are corrected." *Id.*

The SJC acknowledged the uncertainties this may present parties—that judgments may be paid before an appeal is taken, only to have it returned upon a successful appeal. *Id.* The SJC further

acknowledged the new risk calculus a party must make if it believes it lost the battle but will eventually win the war. *Id.* at 488-89. A party that lost at trial will have to make the difficult decision to either: (1) pay now and avoid the accrual of post-judgment interest while an appeal is sought, but risk losing the money if the other party squanders it in the meantime, or (2) wait to pay, as interest accrues at 12%, knowing that if the appeal is lost, it must pay the additional 12% interest.

Ultimately, however, the SJC concluded that those concerns do not trump the basic fairness embedded in G.L. c. 235, § 8 to both parties that "when the judgment has been paid in full, additional interest should not be required; the plaintiff has the money in its possession consistent with the trial court's judgment." *Id.*, at 489.

Takeaways

The SJC's reasoning—that post-judgment interest is not to discourage appeals—is clearly grounded in the interest of fairness and justice. Nonetheless, this decision leaves parties who lose at trial but wish to continue to press their position on appeal with two difficult options. On the one hand, a party that loses at trial but seeks an appeal may now pay the judgment in full and not have interest accrue at the high rate of 12% interest for an uncertain amount of time (often at least a year) as the case works its way through the appeals process. Although this may make an appeal more affordable for those parties who have the ability to pay the judgment, such a party also assumes a risk that the initially prevailing party may dissipate the funds before an appeal is won—hence, making a successful appeal futile. On the other hand, the similarly difficult option is for a judgment debtor to withhold judgment payment until the appeal is complete, recognizing that interest continues to accrue and will be owed if the appeal is lost.

As the SJC noted, "risk and uncertainty is necessary given the right of appeal." *Id.* at 489. Going forward, the decision to pay a judgment payment immediately is one that parties will make after weighing all the risks that the SJC in *H1 Lincoln, Inc.* has now cast in even more stark terms.

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New Lawyer's Corner

Marketing and Business Development Strategies for Early Career Lawyers

By Jennifer Irvine

After decades of working one-on-one with lawyers to help them build and grow their practices, I have observed early habits that often separate those who thrive from those who struggle. While there are many ways for an attorney to become well-known and develop a robust professional network, the most successful private practice attorneys establish consistent marketing and business development routines from day one.

The moment you enter private practice, you should be thinking strategically about your future. Which career paths do you want to keep available? If equity partnership in a law firm is on that list, understand that most firms require partners to generate significant business.

For most attorneys, the challenge is not identifying what needs to be done; it is learning to develop and implement business development strategies while maintaining 1,800 billable hours, a family, hobbies, and more. This balancing act is where careers are often made or broken and where early habits become a determining factor in long-term success.

Marketing vs. Business Development

As lawyers advance from junior associate to income partner and beyond, they must gradually shift from almost exclusively marketing-focused activities to business development. While people often use these terms interchangeably, they are different and have distinct purposes.

Marketing generally focuses on building your personal brand and reputation through "one-to-many" activities, such as writing client alerts, blog posts, and other thought-leadership content, speaking at events and conferences, and posting on social media. These efforts make it possible to reach many people at once.

Business development focuses on building relationships that lead to converting prospects into clients or generating new work from existing clients. This requires engaging in "one-to-one" activities, such as targeted lunches, pitch meetings, referral source development, and strategic networking. These efforts are aimed at connecting with one person or a small group at a time.

The most effective lawyers blend both approaches, adjusting their time allocation for each as they gain experience:

Years of experience	Business Development	Marketing
< 5 years	20%	80%
5-10 years	40%	60%
10-15 years	60%	40%
>15 years	80%	20%

This shift comes naturally to some people and is more difficult for others. Fortunately, business development skills can be learned and practiced. However, it takes intentional commitment and consistent effort to get results.

Marketing Strategies For Junior Associates

Newly minted lawyers understandably focus on honing their legal skills and acumen, but there is more to building a thriving practice. Early in your career, you should start to build your network and think about ways to increase visibility not only for yourself, but also for your practice group and your firm within identifiable target markets. Here are several suggestions for where you may want to start:

Build your network

- Attend community and bar association events so that you may identify well-matched organizations and committees.

- Actively participate in local alumni gatherings or, if none exist in your area, consider launching one.

- Identify and pursue leadership opportunities in young professional groups.

- Connect with new contacts on LinkedIn and, if appropriate, add them to Outlook and the firm's email list (e.g., invite HR professionals to subscribe to the firm's employment law email list).

- Develop a 30-second elevator pitch so you always have an interesting answer to the question "What do you do?"—one that invites people to ask more about the work you do.

- If someone you know shares good news on social media, such as a positive case result or leadership appointment, send a direct message to congratulate them and invite them to lunch to celebrate.

- If the opportunity presents itself, ask others what legal problems they face and network them to your firm or other suitable help.

Networking becomes less daunting if you align it with something in which you are genuinely interested. To get started, view networking not as a chore or burden, but as an extension of what truly engages you. Whether you are passionate about preserving pollinators, addressing food insecurity in your community, or supporting local arts initiatives, these interests often lead to meaningful personal connections. Eventually, you will be able to demonstrate your professional capabilities to like-minded business leaders.

Networks can come from every aspect of your life. Some of the most successful attorneys I know have built robust networks via atypical environments, such as CrossFit communities, youth sports sidelines, wine clubs, book clubs, parent groups, volunteer organizations, and more.

Produce thought leadership

- Draft client alerts and blog posts for partner review.
- Amplify your firm's social media presence by sharing and engaging with content.
- Support partners' speaking engagements by showing up and offering to assist with future presentations.

When writing thought leadership, the first step is to understand who will read the materials so that you may tailor the content appropriately. If you are unclear of your target markets, seek guidance and support from the partners or the marketing and business development team. For example, HR professionals and CFOs hire employment lawyers. Accountants are often important referral sources for corporate lawyers. Estate planning and family law attorneys work closely with financial advisors. By crafting helpful content for the right audience, you earn credibility and visibility that you may build upon over time.

Early career business development activities

Although you are likely to focus primarily on marketing and honing your legal skills early in your career, developing client relationship skills sets you up for effective future business development. Consider these approaches:

Internal relationship building

Your early colleagues often become your most valuable referral sources as your careers progress together. In fact, nearly all successful partners see fellow firm members as vital to their business development strategies. Become one of those trusted people by using a mix of approaches with your more senior colleagues.

- Treat firm colleagues with the same attention, responsiveness, and service mindset as you would external clients.
- Have lunch with attorneys from other practice areas at least once per month. Ask about and show interest in their work, and practice your networking responses. When someone asks, "What's new?" at an event, you should be able to answer in a way that starts a conversation.
- Ask partners about their business development strategies, and identify ways you can support their efforts.

- Get to know your firm's service offerings well enough to naturally talk with prospects about how you and your colleagues help clients solve their problems and achieve their goals.

Learn how to ask partners for new work opportunities by asking questions that uncover the needs of both partners and clients. Analyze the subtle differences between those needs and determine where you may positively impact both. As Legal Marketing Association Hall-of-Famer Deb Scaringi of Scaringi Marketing notes, "If you can learn to ask partners for work, then you can apply those same tactics later when you are asking people in your external network for work."

Practicing your skills with internal clients prepares you for asking external clients and prospects for business later. Practice telling partners, "I want to build my skills in this area. Would you please consider me for the next assignment?" Later, you may use a similar approach with your targets, "I'm building my practice and would love the chance to help with your next deal or legal issue."

Do not hesitate to engage with your internal marketing and business development team; they are one of your most valuable resources. Schedule regular check-ins, ask questions, and take advantage of training opportunities. These professionals are thrilled to help and support motivated lawyers, and building relationships with them early often leads to great opportunities and mentorship.

Client service excellence

Exceptional client service is not just about meeting or exceeding expectations; it is about creating advocates who will follow and support you throughout your career, and who may even become referral sources.

- Deliver efficient, timely, and accurate responses to requests from both internal and external clients.

- Become skilled at writing time entries that clearly show the value you delivered, making it easy for partners and clients to understand your contributions.

- Invest time to understand each client's business, industry, and strategic challenges.

- Develop personal connections with clients by learning about their interests, family, and what matters most to them.

Developing good habits early will serve you throughout your career

At this point, you may be wondering how to effectively leverage your burgeoning network. Experienced attorneys who excel at business development have a systematic approach where they routinely analyze their top clients, prospects, and referral sources. They regularly review their most important contacts for ways to deepen professional relationships.

For example, with a 15-minute daily routine, an advanced business developer will use the time to ask their assistant to schedule a meeting to introduce a client to a potential investor, book lunch to introduce a referral source to another partner at the firm, or invite a prospective client to join them at an event or conference.

The strategy is not complicated, but it requires consistency and intentionality. If you deliberately build a network and create a daily habit throughout your career, you will be ready to successfully shift from marketing activities to business development.

Craig Brown of Gladstone Growth Strategies, LLC, a business development coach for lawyers, emphasizes the importance of starting early: "If you have a list of people and you are reviewing it regularly, then that is half the battle. It is never too early to start this 15-minute daily habit. Building this practice early in your career creates the routine and increases the chances that you will maintain it even during your busiest periods."

For those interested in understanding the psychology behind habit formation, *The Power of Habit* by Charles Duhigg is a great resource. I frequently recommend that small groups of lawyers read and discuss how to apply these concepts to business development.

Give your career a foundation to grow upon

It is important to recognize that relationship-building is not an optional add-on to your legal practice. It is essential to career success. Many lawyers are not social butterflies, so remember that professional relationships do not require endless rubber chicken dinners and cocktail parties. Instead, they are built on trust, reliability, and competence.

When you consistently deliver quality work on time, ask insightful questions, and demonstrate genuine care for and interest in your clients' goals and challenges, you are building the foundation for lasting and productive professional relationships. Ultimately, clients want attorneys who can solve problems efficiently while showing sincere interest in their success, careers, and organizations.

If equity partnership is part of your vision for the future, you must develop exceptional legal and client service skills, a strong personal brand and reputation, and a robust network of people who are invested in your personal success. If you maintain sustainable habits throughout your career, relationship-building will become more natural, and you will set yourself up to thrive in private practice.

The best time to start is now. Take that first step: schedule a 15-minute meeting with yourself today.

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