

Massachusetts Bar Association Debt Collection/Small Claims Task Force

In July and August 2006, the *Boston Globe* published a Spotlight series of articles dealing with debt collection practices and procedures, the manner in which some cases are handled in the Small Claims Courts, and the abuses some have suffered at the hands of aggressive debt collectors. Former MBA President Warren Fitzgerald responded to the series with an opinion piece on the editorial page of the *Globe* on August 6, 2006, calling for an examination of the issues raised in the series.

Accordingly, MBA President Mark Mason will be creating the Massachusetts Bar Association Debt Collection/Small Claims Task Force consisting of experienced attorneys and appropriate court personnel. Among the charges to this task force are the following:

1. Consideration of Small Claims Court procedures for notice. G.L. c. 218, § 22 was amended by St. 2004, c. 149, § 199, which eliminated the notice by registered mail; the rule now allows notice by first class mail, with the reduced assurance that notice is actually being received. Does the procedure afford sufficient protection to defendants?
2. Consideration of Small Claims Court procedures in the event of default. The articles suggest that the amount of damages alleged in the complaint is usually entered as the default judgment without further offer of proof. Is this the general practice? What amount of proof should be required to demonstrate the debt?
3. Consideration of proposed amendments to the Uniform Small Claims Rules. The Rules were revised in 2001. Are additional amendments required?
4. Creation of consumer information on debt collection and small claims procedures. Although there are resources available to consumers from various sources on proper debt collection practices under state and Federal law, the MBA can and should provide comprehensive information for Massachusetts consumers. This information should be available on the MBA website. Additional materials, such as brochures on debt collection practices and on small claims procedures, should be considered for distribution in the District Courts.
5. Consideration of amendments to G.L. c. 235, § 34, which governs property exempt from seizure on execution. Dating back to the 1600s, and last amended in 1975, the statute preserves two cows, twelve sheep, two swine and four tons of hay, but only allows one to keep an automobile not exceeding seven hundred dollars; one is allowed seventy-five dollars per month for fuel, heat, hot water, water and light. What changes should be made to reflect the basic needs of individuals in modern society?

These bullet points are only preliminary, and the Task Force will be asked to identify and analyze additional matters relating to debt collection and Small Claims procedures in Massachusetts as well as other appropriate amendments to Massachusetts laws and court rules.

The Task Force should complete its work by February 15, 2007, and make recommendations to the House of Delegates at the March 2007 Annual Meeting of the Association.