

Opinion 13-018 and Opinion 16-002 were withdrawn by a letter from the Division of Banks dated 4/1/16.



**THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS**

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November 2, 2015

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

Dear Mr. Wilson:

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

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

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

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

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

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

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

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

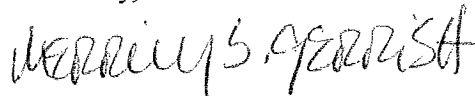
¹ The term "law firm" in this opinion includes one or more attorneys, regardless of corporate structure.

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

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

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

Sincerely,



Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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