COMMONWEALTH OF MASSACHUSETTS

THE APPEALS COURT

ESSEX, ss. No. 2022-P-0706

COMMONWEALTH OF MASSACHUSETTS
Petitioner-Appellant

v.

MARK DAVIDSON
Respondent-Appellee

ON INTERLOCUTORY APPEAL FROM
AN ORDER OF THE NORTHEAST HOUSING COURT
AS REPORTED BY A SINGLE JUSTICE OF THE APPEALS COURT

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS AS APPELLANT

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October 28, 2022

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STATEMENT OF THE ISSUES

(1) Whether the provision in G.L. c. 151B, § 5, requiring in certain cases of alleged discriminatory housing practices that "the attorney general shall commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred," means that such an action may be maintained only in the Superior Court and cannot be transferred to the Housing Court under G.L. c. 185C, § 20, even if otherwise within the latter court's jurisdiction under G.L. c. 185C, § 3.

(2) What is or should be the appropriate procedure for transferring a case to the Housing Court under G.L. c. 185C, § 20, and whether the propriety of such a transfer may be determined by a judge of the transferring court before any transfer, a judge of the Housing Court after any transfer, or both (see generally St. Joseph's Polish Nat. Catholic Church v. Lawn Care Associates, Inc., 414 Mass. 1003, 1003-1004 [1993], and cases cited).

(3) Whether Trial Ct Rule XII, which governs interdepartmental assignment and consolidation of cases where "two or more actions are pending in different departments of the Trial Court and ... are related actions involving substantially the same or similar issues and parties," id. § 1, has any application to a case such as this, where, so far as the record shows, there is only one action pending between these parties concerning the alleged discriminatory acts or practices at issue.[1]

[1] Question 1 is the question on which this Court solicited amicus briefs. Questions 2 and 3 were posed by the Single Justice while reporting the case to this Court. See R.A.52. In addition to the three issues stated in text, the Single Justice also noted that the parties may wish to discuss the impact that the construction of G.L. c. 151B, § 5 may have on the Massachusetts Commission Against Discrimination's receipt of Federal fair housing funding. See R.A.52. That question is addressed infra, as a subsidiary part of Question 1.

STATEMENT OF THE CASE & STATEMENT OF FACTS

The Commonwealth, through the Attorney General, filed the Complaint in this case in Essex Superior Court on March 30, 2022.[2] R.A.4-5. In its Complaint, the Commonwealth alleges that the Defendant, Mark Davidson, violated Massachusetts fair housing and consumer protection laws by withdrawing his offer of a lease renewal immediately upon learning that his tenants were expecting a child. R.A.5-10. The Complaint alleges that, as a result of the Defendant's attempts to avoid his obligations under Massachusetts lead laws, the tenants had to find a new place to live and move, during a pandemic, while seven months pregnant. R.A.9. The Defendant later rented the apartment to tenants who do not have children. R.A.10. Through this action, the Commonwealth seeks injunctive relief, compensatory and punitive damages, civil penalties, and attorneys' fees and costs. R.A.12.

[2] Before the filing of the Superior Court Complaint, two tenants filed a complaint against the Defendant before the Massachusetts Commission Against Discrimination ("MCAD") in June 2021; the MCAD made a finding of probable cause in October 2021; the Defendant elected judicial determination pursuant to G.L. c. 151B, § 5 in November 2021; and the case was then referred by the MCAD to the Attorney General's Office. See R.A.7.

On April 25, 2022, the Defendant filed an Answer in Essex Superior Court. R.A.14-19. Ten days later, represented by new counsel, the Defendant filed (without prior notice to the Commonwealth) a "Notice of Transfer to Housing Court," invoking that court's jurisdiction and relying upon G.L. c. 185C, §§ 3 & 20. R.A.20. The Essex Superior Court closed and transferred the case to the Housing Court on the same day. R.A.4.

On May 19, 2022, the Commonwealth moved to transfer the case back to Superior Court. R.A.25. After the Defendant filed a written opposition (see R.A.32), the Housing Court (Mitchell-Munevar, J.) denied the Commonwealth's motion both orally and in writing after a hearing on June 9, 2022. R.A.36. The Housing Court denied the motion to transfer not because it believed it had jurisdiction. Instead, in its view, the Housing Court lacked the authority to transfer a case back to Superior Court. The only way to fix the unlawful transfer, according to the Housing Court, would be to file "an interdepartmental request ... according to Trial Court Rule XII." R.A.36.

On July 7, 2022, the Commonwealth filed a petition for interlocutory relief pursuant to G.L. c. 231, § 118,

¶ 1.[3] R.A.37. The Defendant filed his opposition on July 22, 2022. R.A.45. Five days later, on July 27, 2022, the Single Justice (Sacks, J.) issued an order granting the Commonwealth's petition, thereby allowing the case to proceed in Superior Court,[4] while also "reporting the correctness of [his] order to a panel of this court." R.A.52. The Single Justice also raised three subsidiary questions "the parties may wish to discuss" in their briefs, which are each addressed infra. R.A.52.

ARGUMENT

The Housing Court's refusal to transfer this case back to Superior Court was incorrect as a matter of law. The Fair Housing Act specifically requires the Attorney General to "commence and maintain" suit in Superior Court in cases such as this one. See G.L. c. 151B, § 5. As a matter of clear statutory text -- as well as

[3] The Commonwealth did not pursue a transfer under Trial Court Rule XII, as suggested by the Housing Court, because in the Commonwealth's view the text of that rule makes clear that it is meant for the consolidation of multiple cases rather than the transfer of a single case. See Trial Court Rule XII (1) ("If two or more actions are pending in different departments of the Trial Court …"). See infra Part IV. Given the lack of any other mechanism to return the case to Superior Court, the Commonwealth sought interlocutory relief.

[4] The Single Justice allowed discovery to proceed in the Superior Court but stayed any motion or trial proceedings that could dispose of the case pending the outcome of this appeal. R.A.52.

legislative history and policy -- the Housing Court has no jurisdiction to hear this case.

Further, this Court should make clear that Housing Court judges (like all trial court judges) have the authority to correct serious jurisdictional defects, like that here, by reporting them to the Chief Administrative Justice of the Trial Court for timely transfer back to Superior Court. See St. Joseph's Polish Nat. Cath. Church v. Lawn Care Assocs., Inc., 414 Mass. 1003 (1993).

Finally, this Court should clarify that Trial Court Rule XII -- which governs consolidation and transfer when multiple cases are pending in different trial court departments -- has no application in a case (like this one) involving only a single pending action.

I. Standard of Review

Although review of an interlocutory order pursuant to G.L. c. 231, § 118, ¶ 1 is generally for a "clear error of law or abuse of discretion," the single justice's authority in acting on such a petition "is nonetheless plenary." Jet-Line Servs., Inc. v. Bd. of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988). "On review of a report by the single justice, [a panel of this Court] consider[s] the merits of the

underlying order." Chadwick v. Duxbury Public Schools, 475 Mass. 645, 650 (2016). And where that underlying order turns on a "pure question of law" -- as here -- this Court "accord[s] no deference to the judge's decision." Id.

II. Fair housing actions filed by the Commonwealth must be heard in Superior Court.

Chapter 151B of the General Laws empowers private parties to vindicate their own interests and authorizes the Attorney General to file suit to vindicate the interest of the Commonwealth to remedy, deter, and punish discrimination in housing. When private parties file such a suit, they may do so in either Superior Court or Housing Court.[5] But the statute specifically requires the Attorney General to bring suit in cases referred to it by the MCAD only in Superior Court, and further requires that such a suit also be "maintain[ed]" in that court.[6] The statute is thus clear on its face concerning

[5] See G.L. c. 151B, § 9 (authorizing Superior, Probate, or Housing Court filings).

[6] See G.L. c. 151B, § 5 (empowering the Attorney General to "commence and maintain [] a civil action on behalf of the complainant in the superior court").

where the Commonwealth must file and maintain its civil enforcement cases.[7]

This Court need not look beyond the plain text of the statute to resolve this case. When reading statutes -- especially sections within the very same chapter -- a difference in language reflects a difference in meaning. See Commonwealth v. Williamson, 462 Mass. 676, 682 (2012). See also Doe v. Superintendent of Sch. of Worcester, 421 Mass. 117, 128 (1995) ("If the Legislature intentionally omits language from a statute, no court can supply it."); Harborview Residents' Comm., Inc. v. Quincy Hous. Auth., 368 Mass. 425, 432 (1975) ("a statutory expression of one thing is an implied exclusion of other things omitted from the statute"). Here, when the Legislature specifically included the Housing Court as a venue for private plaintiffs to bring their cases, but omitted this option for the

[7] While this Court need not determine whether the Housing Court has jurisdiction over housing-related cases brought by the Attorney General under Chapter 93A -- the other statute under which the Commonwealth brought this suit -- it is noteworthy that the consumer protection statute similarly authorizes private parties to file in either Superior Court or Housing Court but provides that the Attorney General must file in Superior Court. Compare G.L. c. 93A, §§ 9 & 11 (authorizing private Superior or Housing Court filings), with id. § 4 (empowering the Attorney General to bring an action "in the superior court").

Commonwealth, it "impliedly reflected its intent" that such cases brought by the Commonwealth be adjudicated only in Superior Court. Skawski v. Greenfield Inv'rs Prop. Dev. LLC, 473 Mass. 580, 587-588 (2016) (holding that a statute's specification that Superior Court shared concurrent jurisdiction with the permit session of the Land Court, while not specifying any other court, meant that cases at issue could "be adjudicated only by these two courts").

A. The text and history of G.L. c. 151B, § 5 require that Attorney General enforcement actions start and stay in the Superior Court.

Section 5 of Chapter 151B is especially clear that housing discrimination actions brought by the Commonwealth must proceed in Superior Court. Under Section 5, the MCAD must refer fair housing cases to the Attorney General's Office after it finds probable cause for crediting a complainant's allegations of housing discrimination and either party to the complaint elects judicial determination. Within 30 days of that referral, according to the statute, the Attorney General "shall commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred." G.L. c. 151B, § 5 (emphasis added).

This case stands in precisely that posture: a referral to the Attorney General's Office upon an election of judicial determination after a probable cause finding by the MCAD. Thus, it must not only be brought, but maintained, in Superior Court. On the other hand, when a private litigant files suit alleging an act of discrimination under Chapter 151B, the case may be filed in Superior Court, Probate Court, or Housing Court (if the alleged discriminatory act involves residential housing). See G.L. c. 151B, § 9. Private litigants can choose any of those three fora; the Commonwealth cannot.

Legislative history reinforces the statutory language. The Legislature created the Housing Court Department in 1978, through an enabling act that also included the transfer provision in Section 20 of Chapter 185C. See St. 1978, c. 478, § 92.[8] Later, in 1989, the Legislature amended Section 5 of Chapter 151B specifically requiring the Attorney General to "commence and maintain" civil actions in the Superior Court in

[8] The Housing Court's jurisdiction expressly extends to actions brought under Chapter 93A, among other named statutes (Chapter 151B not among them), as well as "jurisdiction under the provisions of ... any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly" with housing. G.L. c. 185C, § 3.

certain housing cases that originated with the MCAD, as described above. See St. 1989, c. 722, § 24. "[T]he legislature is aware of existing statutes when it enacts subsequent ones." Thurdin v. SEI Bos., LLC, 452 Mass. 436, 444 (2008). Against an existing statutory backdrop already allowing private litigants to choose to file claims arising under c. 151B in either Superior or Housing Court, the Legislature added the Attorney General's authority to bring and maintain enforcement actions on probable-cause referrals from the MCAD, but only in the Superior Court.

If a defendant in a housing discrimination action initiated by the Attorney General could transfer the case to Housing Court, the careful statutory scheme described above would be undone. The Legislature's specification of Superior Court as the proper venue for such cases would be rendered a mere suggestion, and its directive to the Attorney General to "maintain" the action in Superior Court would effectively be a nullity, as it would be rendered subject to a defendant's desire to transfer the case to Housing Court. Nothing in the statutory scheme or the legislative history suggests that this was the Legislature's intention. Of course, the Legislature knows how to confer jurisdiction on the

Housing Court, as it has done for actions filed under Chapter 151B by private litigants. But it has elected not to do so in Attorney General civil enforcement actions filed after a probable-cause referral from the MCAD. Instead, all indications are that the Legislature intended that such actions initiated by the Attorney General proceed only in Superior Court.[9]

B. The Housing Court transfer statute, G.L. c. 185C, § 20, does not apply.

In the Housing Court, and before the Single Justice, the Defendant's argument relied solely upon the general statute permitting transfers of cases to the Housing Court that are within its jurisdiction. See R.A.32-35 & 45-48 (citing G.L. c. 185C, § 20).[10] But, for the reasons already stated, this case is not "within the

[9] Two Single Justices (including Justice Sacks below) have addressed this question and found exclusive jurisdiction in the Superior Court. See Commonwealth v. Taymil Partners, LLC, 2021-J-101 (August 27, 2021) (Meade, J.).

[10] In the prior proceedings, the Defendant attempted to distinguish Justice Meade's order in Commonwealth v. Taymil Partners, LLC, 2021-J-101 (August 27, 2021), by arguing that in this case (and unlike in Taymil Partners) the Defendant had not yet filed an answer in the Superior Court matter prior to the transfer. See R.A.35, 48. But that was wrong as a matter of both fact and law. Factually, the Defendant was incorrect: he did file an answer in Superior Court. See R.A.14-19. Legally, the Defendant did not explain either how or why the filing of an answer changes the statutory meaning of Chapter 151B.

jurisdiction of the housing court department," G.L. c. 185C, § 20, because this type of enforcement action may proceed only in Superior Court. As explained above, there is ample evidence in the text and history of Chapter 151B that the Legislature meant to exclude civil enforcement actions brought by the Attorney General from the Housing Court. Reliance on the generic Housing Court transfer statute just begs the jurisdictional question. See St. Joseph's Polish Nat'l Catholic Church v. Lawn Care Associates, Inc., 414 Mass. 1003, 1004 (1993) (holding that G.L. c. 185C, § 20 "must be read to apply to an action which is properly within the Housing Court's jurisdiction at the outset"). The transfer statute does not confer jurisdiction; it authorizes a transfer when there already is jurisdiction.

Although this case would arguably fall within the concurrent subject-matter jurisdiction of the Housing Court if filed by a private litigant -- insofar as it involves the "health, safety, or welfare" of tenants in rental housing, see G.L. c. 185C, § 3 -- that alone does not support maintenance of this case in the Housing Court. Here, the very specific provision of Chapter 151B, § 5 must be read in conjunction with the general provisions of Chapter 185C to require that enforcement

actions filed by the Attorney General remain in the Superior Court. "It is a basic canon of statutory interpretation that general statutory language must yield to that which is more specific." TBI, Inc. v. Bd. of Health of N. Andover, 431 Mass. 9, 18 (2000) (quotation marks omitted). The more general statute on which the Defendant relies does not displace the Superior Court's specific and exclusive authority, consistent with the statutory directive for these types of actions, when brought by the Attorney General. Were there any doubt that Chapter 151B controls, however, the chapter itself says so: "any law inconsistent with any provision of this chapter shall not apply." G.L. c. 151B, § 9.

C. The Defendant's atextual reading of Chapter 151B's "commence and maintain" language could imperil the MCAD's federal fair housing funding.

In reporting this case to a full panel, the Single Justice raised another issue concerning Chapter 151B:

> Whether the pertinent language added to G.L. c. 151B, § 5, by St. 1989, c. 722, § 24, was patterned after the similar language added one year earlier to 42 U.S.C. § 3612 by Pub. L. 100-430, § 8(2), Sept. 13, 1988, 102 Stat. 1629, and, if so, whether the amendment to G.L. c. 151B, § 5, including its specification of the Superior Court as the court in which an action is to be commenced and maintained, reflects some requirement for the Massachusetts Commission Against Discrimination's receipt of Federal fair housing funding for housing

> discrimination enforcement, see, e.g., St. 2021, c. 24, § 2, line item 0940-0101.

As explained in greater detail below, the answer to the Single Justice's question is yet another reason to construe Chapter 151B as argued herein.

Under 42 U.S.C. § 3610(f), the Secretary of Housing and Urban Development ("HUD") may refer complaints alleging discriminatory housing practices to a "certified" State or local public agency within the jurisdiction. But the statute imposes clear limits on the Secretary's certification authority:

> The Secretary may certify an agency under this subsection only if the Secretary determines that--(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made; (ii) the procedures followed by such agency; (iii) the remedies available to such agency; and (iv) the availability of judicial review of such agency's action; are substantially equivalent to those created by and under this subchapter.

42 U.S.C. § 3610(f)(3)(A). In short, HUD can only refer housing discrimination cases to local or State agencies that are certified as "substantially equivalent" to HUD. See generally 24 C.F.R. §§ 115.200-115.212 (establishing standards for "substantial equivalence" certification). Through the Fair Housing Assistance Program, HUD then funds those state and local agencies that are certified

under this standard.[11] Thus, when Congress changes the statutes that govern HUD, state and local fair housing authorities must adjust accordingly.

In 1988, Congress made multiple changes to the Fair Housing provisions that govern civil actions filed after a complaint originating at HUD. See Pub.L. 100-430, § 8(2). Most pertinent here, the statute provided that if a party to a complaint elects a judicial determination in lieu of an agency decision, then "the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection." See id. at § 8(2).

The following year, the Massachusetts General Court added the near-verbatim language to G.L. c. 151B, § 5 at issue here. Upon judicial election,

> the commission shall authorize, and not later than thirty days after the election is made the attorney general shall commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred.

[11] See Fair Housing Assistance Program (FHAP), U.S. Dep't of Housing and Urban Development, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP.

St. 1989, c. 722, § 24. Given the language and substance of this amendment, and others,[12] it seems clear that this statute (passed just one year later) was patterned after the changes in Federal law as part of a package of reforms meant to ensure that Massachusetts fulfilled its "substantial equivalence" obligation. See Dahill v. Police Dep't of Boston, 434 Mass. 233, 238 (2001). Indeed, according to a contemporaneous statement from Governor Dukakis when he submitted the original version of the bill to the Legislature, its express purpose was to ensure that Massachusetts would "continue to receive federal funds" by satisfying the substantial equivalence requirement. Crossing Over, Inc. v. City of Fitchburg, 98 Mass. App. Ct. 822, 831 n.13 (2020), quoting 1989 House Doc. No. 5534.[13]

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[12] The 1989 statute made several other changes to state law that mirrored the Federal law from the prior year. For example, both statutes give a party to a complaint 20 days to elect a judicial determination, requires parties to give notice of such an election to all other parties, gives the aggrieved person the right to intervene in the civil action filed by the Attorney General, and makes clear (in near-identical language) that a court may grant -- and the aggrieved person has a right to receive -- identical relief in an Attorney General enforcement action as in a private cause of action. Throughout, the Massachusetts amendment continuously and purposefully mirrors its federal counterpart.

[13] In general, Chapter 151B is construed consistently with the Fair Housing Act unless our state courts

In making a "substantial equivalence" decision, the Secretary reviews four statutory factors: the "substantive rights" protected by the state agency, the "procedures" it follows, the "remedies available," and the "availability of judicial review." 42 U.S.C. § 3610(f)(3)(A)(i)-(iv). None of these four factors expressly incorporates the venue issue raised here. But reading the statute as the Defendant suggests -- to permit jurisdiction over Attorney General enforcement actions referred from the MCAD in multiple courts -- would potentially distinguish Massachusetts "procedure" and the manner of judicial review from the Federal statute that allows civil enforcement actions to be brought only in a single venue.[14] Of course, it is impossible to know what certification decision the Secretary might reach. But only the Defendant's reading of the statute threatens the MCAD's federal funding

"discern a reason to depart from those decisions." Andover Hous. Auth. v. Shkolnik, 443 Mass. 300, 306 (2005).

[14] Federal regulations make clear that the "substantial equivalence" analysis also extends to the process through which parties may elect judicial determination in lieu of agency adjudication. See 24 C.F.R. § 115.204(b)(2) ("If an agency's law offers an administrative hearing, the agency must also provide parties an election option substantially equivalent to the election provisions of section 812 of the Act.").

because only the Defendant's reading creates a dissimilarity between state and federal fair housing laws -- which must be substantially equivalent both "on [their] face" and "in operation." 24 C.F.R. § 115.201.

This distinction makes a very real difference. The MCAD is currently certified as a substantially equivalent agency by HUD.[15] In FY2021, the MCAD received $985,716 from HUD -- over 13% of its overall funding.[16] The Defendant's needless attempt to introduce a distinction between state and federal fair housing law, thus disrupting their equivalence and potentially endangering MCAD funding, is as problematic in practice as it is wrong on the law.

III. When a civil enforcement action brought by the Attorney General is incorrectly transferred to Housing Court, the Housing Court Judge should report the issue to the Chief Administrative Justice of the Trial Court for prompt transfer back to Superior Court.

In reporting the case to a full panel, the Single Justice asked the parties to address the proper mechanism for transfer of cases between court

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[15] See U.S. Dep't Hous. & Urban Dev., Fair Housing Assistance Program (FHAP) Agencies, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#MA.

[16] Annual Report Fiscal Year 2021, Massachusetts Commission Against Discrimination at 6, https://www.mass.gov/doc/mcad-fy21-annual-report/download.

departments under like circumstances. In the Commonwealth's view, this Court should make clear -- contrary to the view of the Housing Court judge below -- that transferee courts always have inherent authority to transfer cases over which they lack jurisdiction. The inherent powers of the judiciary are those "whose exercise is 'essential to the function of the judicial department, to the maintenance of its authority, or to its capacity to decide cases.'" Bower v. Bournay-Bower, 469 Mass. 690, 698 (2014), quoting Sheriff of Middlesex County v. Comm'r of Corr., 383 Mass. 631, 636 (1981). Where, as here, a case has been improperly transferred to a court that lacks jurisdiction to hear it, the court's inherent power to "maint[ain] ... its authority ... [and] its capacity to decide cases" includes the power to transfer the matter to ensure that the proper, statutorily-authorized tribunal is the one to consider and decide it. Were it otherwise, the transferee court's lack of jurisdiction could only be remedied after its improper exercise.

The proper procedural mechanism for such transfers can be found in the decision cited by the Single Justice in raising this question: St. Joseph's Polish Nat. Catholic Church v. Lawn Care Associates, Inc., 414 Mass.

1003 (1993). There, the Court concluded that a judge in a court of limited jurisdiction, such as a Housing Court judge, should report serious jurisdictional issues to the Chief Administrative Justice of the Trial Court for timely transfer as they arise. Id. at 1003-1004. Any such request should be "promptly made" by the Housing Court judge and "will usually be granted before the commencement of trial" in the interest of judicial efficiency. Id. That is particularly true where, as here, the "parties agree that the Superior Court has jurisdiction," posing "no impediment to transfer." Lowery v. Resca, 75 Mass. App. Ct. 726, 728 (2009). In short, in a case like this one, the Housing Court and the Chief Administrative Justice of the Trial Court should together facilitate the transfer of civil enforcement actions brought by the Attorney General back to Superior Court.[17]

[17] Of course, there is a preliminary role for the transferring court to play as well. To avoid a waste of judicial and litigant resources, the Superior Court should review any notice of transfer for an obvious jurisdictional defect. For example, should this Court agree with the Commonwealth's jurisdictional argument here, going forward the Superior Court should decline to transfer Attorney General enforcement actions in like posture that are filed under Chapter 151B.

Reliance on this procedure has multiple virtues. For one, it does not involve some new, complex process to remedy or preempt the improper transfer of civil enforcement actions to the Housing Court. Rather, per the SJC's decision in St. Joseph's Polish Nat. Catholic Church, this is the established procedure for the transfer of cases over which a specialty court lacks jurisdiction, regardless of the reason for the jurisdictional defect. Second, it relies upon the specialized experience and expertise of Housing Court judges -- either sua sponte or upon notice from a party -- to identify the defect. Third, this rule is simple and does not necessarily require the involvement of the parties to the case. Any procedure that depended on the parties to raise and brief the jurisdictional issue would inevitably advantage represented litigants over those who are pro se.[18]

[18] This would pose a particular problem in Housing Court. "[I]n fiscal year 2018, 92.4 percent of Housing Court summary process defendants were unrepresented. In contrast, 70.2 percent of plaintiffs initiating summary process eviction cases in the Housing Court were represented by counsel." Adjartey v. Central Div. of Housing Ct. Dep't, 481 Mass. 830, 838 (2019). These pro se litigants "often face additional barriers such as mental disabilities or limited English proficiency." Massachusetts Justice for All, Strategic Action Plan at 35 (Dec. 22, 2017). "[T]he result is a persistent power imbalance that prevents equal access to justice." Id. at

IV. Trial Court Rule XII's procedure for the consolidation of multiple cases pending in distinct trial court departments has no application to situations, such as that here, involving the inter-departmental transfer of a single case.

In proceedings below, the Housing Court denied the Commonwealth's motion to return this case to Superior Court while expressing no view on whether it had jurisdiction. Instead, the Court said that it "ha[d] no authority to issue such an order," believing that an interdepartmental transfer could only occur upon letter request to the Chief Justice of the Trial Court pursuant to Trial Court Rule XII. R.A.36. But a Rule XII request is proper only "[i]f two or more actions are pending in different departments of the Trial Court." Trial Court Rule XII, ¶ 1.

Here, only a single action is pending. The Housing Court therefore erred in placing any reliance on Rule XII, as that rule does not apply to this situation by its plain terms. And, as explained supra Part III, the Housing Court had ample inherent authority to transfer

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36. This Court should not introduce additional legal complexity into such an asymmetrical environment. Engler, And Justice for All-Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks, 67 Fordham L. Rev. 1987, 2060 (1999) (noting that "unrepresented litigants interviewed were often intimidated and frightened by the process of appearing in the Boston Housing court") (citation omitted).

the case back to the Superior Court regardless of Rule XII.

CONCLUSION

For the foregoing reasons, the order of the Housing Court should be vacated, the case should be transferred to the Superior Court in which it was filed, and the stay entered by the single justice should be vacated.

COMMONWEALTH OF MASSACHUSETTS
By its attorney,

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Dated: October 28, 2022

CERTIFICATE OF SERVICE

I, David Rangaviz, hereby certify that on October 28, 2022, I served a copy of this brief and the accompanying Record Appendix by email to counsel for the defendant:

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ADDENDUM

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COMMONWEALTH OF MASSACHUSETTS
NORTHEAST HOUSING COURT

Commonwealth of Massachuetts

Plaintiff

- v.- No. 22-CV-101

Mark Davidson

Defendant

ORDER

On June 9, 2022, the Court held a case management conference in the above matter. Counsel for both parties appeared. Counsel for the Plaintiff filed a motion requesting that the Court return this matter to the Superior Court claiming the Housing Court Department has no jurisdiction over the issues in this case.

This Court has no authority to issue such an order and an interdepartmental request must be requested according to Trial Court Rule XII. The clerk shall reschedule the case management conference, according to the our practices, and availability, and as appropriate in light of Plaintiff's intent to seek an interdepartmental transfer. As indicated at the conference, the parties are free to file a stipulated discovery schedule for the Court's review and approval.

So Ordered
/s/ Alex Mitchell-Munevar
Associate Justice
Date: 6/9/2022

APPEALS COURT
Single Justice
Case Docket

COMMONWEALTH OF MASSACHUSETTS vs. TAYMIL PARTNERS, LLC
2021-J-0101

CASE HEADER

Case Status	Disposed: Case Closed	**Status Date**	08/27/2021
Nature	GLc 231, s 118, p 1	**Entry Date**	03/12/2021
Pet Role Below	Defendant	**Single Justice**	Meade, J.
Brief Status		**Brief Due**	
Case Type	Civil	**Lower Ct Number**	
Lower Court	Middlesex Superior Court	**Lower Court Judge**	Valerie A. Yarashus, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
Commonwealth of Massachusetts Plaintiff/Respondent	David Urena, Assistant Attorney General
Taymil Partners, LLC Defendant/Petitioner	Lisa M. Gouveia, Esquire Vladimir L. Nechev, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
03/12/2021	#1	Petition pursuant to G.L. c. 231, s. 118 filed by Taymil Partners, LLC.
03/12/2021	#2	Memorandum of law in support filed by Taymil Partners, LLC.
03/12/2021	#3	Appendix filed by Taymil Partners, LLC.
03/12/2021	#4	Copy of docket report , received from Middlesex Superior Court.
03/18/2021		RE#1: On or before 03/25/2021, the Commonwealth shall file a response to the defendant's petition addressing the merits of the petition, including whether there exists any relevant legislative history pertaining to G. L. c. 93A, §§ 4, 9; G.L. c. 151B, § 5; or G. L. c. 185C, §§ 3, 20 evidencing the legislature's intention to divest the Housing Court of concurrent subject matter jurisdiction over housing discrimination claims. See Skawski v. Greenfield Inv'rs Prop. Dev. LLC, 473 Mass. 580, 585 (2016). (Meade, J.). *Notice/Attest/Yaraschus, J.
03/25/2021	#5	Response filed for Commonwealth of Massachusetts by Attorney David Urena.

08/27/2021	RE#1 (Revised): The defendant in a housing discrimination case filed by the Commonwealth in the Superior Court, has filed a petition, pursuant to G. L. c. 231, s. 118, first para., seeking review of the denial of its motion to transfer the case to the Housing Court. In support of its petition, the defendant has submitted a memorandum and appendix. The Commonwealth has filed an opposition. The Commonwealth filed its complaint in Superior Court alleging that the defendant permitted racist tenant-on-tenant harassment at its property. The defendant thereafter filed a notice of transfer to the Central Housing Court. Although the notice of transfer does not explicitly say so, it is fair to infer that the defendant sought a transfer by right pursuant to G. L. c. 185C, § 20. The Superior Court judge ordered: "After review, no action is to be taken on the defendant's Notice of Transfer. It is non-compliant with Superior Court Rule 9A and cites no authority for entry of such an entry. After filing an answer to the Commonwealth's complaint, the defendant then served and filed a motion to transfer, which was opposed by the Commonwealth. The judge concluded that G.L. c. 185C, § 20 did not control, and denied the defendant's motion. The defendant then filed its petition to this court. To succeed, the defendant's petition and supporting materials must demonstrate that the Superior Court judge's order was a clear error of law or an abuse of discretion. See Jet-Line Services, Inc. v. Board of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988). Further, in considering a petition, I am mindful that my authority to vacate an interlocutory order of a trial court judge should "be exercised in a stinting manner with suitable respect for the principle that the exercise of judicial discretion circumscribes the scope of available relief." Edwin Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). Here, the defendant alleges that the Superior Court judge erred as a matter of law and that it was entitled to transfer the case to the Central Housing Court. In this case, the specific question is whether it was a clear error of law to conclude, as the judge did here, that the legislature intended to exclude housing discrimination cases brought by the Commonwealth, pursuant to G. L. c. 151B, § 5 from the broad right to transfer to the Housing Court department any housing-related cases. G. L. c. 185C, § 20. Section 3 of chapter 185C grants the Housing Court broad concurrent jurisdiction in "near-unbounded", "imprecise", and "ungainly" language. Murphy v. Miller, 75 Mass. App. Ct. 210, 214 (2009). Section 20 permits any party to transfer to the Housing Court any case within its jurisdiction. G. L. c. 185C, § 20. The Commonwealth does not dispute that the Housing Court generally has subject matter jurisdiction over housing discrimination cases, and in the absence of further statutory language, section 20 would permit the defendant to transfer this case to the Housing Court. However, the Commonwealth argues that the specific, contradicting, provisions of G. L. c. 151B, § 5 regarding the appropriate court in which the attorney general may commence and maintain an action should control. Specifically, section 5 states, "[i]f any complainant or respondent [in the administrative proceedings before MCAD] elects judicial determination . . . , the commission shall authorize, and not later than thirty days after the election is made the attorney general shall commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred." It is the defendant's contention that the statutes in question do not contradict each other, that G. L. c. 151B, § 5 applies broadly in discrimination matters including many that would fall outside of the Housing Court's jurisdiction, and that the legislature intended that the defendant in a suit brought by the Attorney General may transfer the case to the Housing Court by right. The defendant has failed to demonstrate that the Superior Court judge erred when he adopted the Commonwealth's interpretation of the interplay between the statutes. This dispute may not be resolved by relying solely on the plain language of the statutes. Contrary to the defendant's argument that there is no conflict between the statutes, the attorney general cannot maintain an action in the Superior Court, as required by G.L. c. 151B, § 5 that has been transferred to the Housing Court pursuant to G. L. c. 185, § 20. See City Elec. Supply Co. v. Arch Ins. Co., 481 Mass. 784, 788 (2019) (court looks first to plain language). Thus, the Superior Court judge was compelled to consider other tenants of statutory construction. The judge's conclusion that the specific forum set forth for an action wherein the Attorney General is prosecuting a discrimination claim brought on behalf of an aggrieved citizen should take precedence over the broad language of the transfer statute which applies to innumerable cases was not inapt. See TBI, Inc. v. Bd. of Health of N. Andover, 431 Mass. 9, 18 (2000). The judges conclusion is further supported by the subsequent legislative inclusion of the Housing Court as an appropriate forum in cases brought by private litigants in housing-related consumer protection or discrimination claims. The relevant sections for a private right of action in both G. L. c. 93A and G.L. 151B both explicitly include the Housing Court; whereas actions brought the attorney general must be commenced and maintained in the Superior Court. See Doe v. Superintendant of Sch. of Worcester, 421 Mass. 117, 128 (1995) ("If the Legislature intentionally omits language from a statute, no court can supply it."). Therefore, if the legislature had intended for actions brought by the Attorney General to be transferred to the Housing Court, as argued by the defendant, it could have done so by amending the statutory language and chose not to do so. For these reasons, the defendant has failed to demonstrate that the judge's order was a clear error of law. The defendant's petition is denied. So ordered. (Meade, J.). *Notice/Attest/Yarashus, J.

As of 08/27/2021 2:15pm

42 U.S.C. § 3610(f)

(f)Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A)within the jurisdiction of a State or local public agency; and

(B)as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

(A)the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B)the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C)the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)

(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i)the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii)the procedures followed by such agency;

(iii)the remedies available to such agency; and

(iv)the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

G.L. c. 93A, § 4

Actions by attorney general; notice; venue; injunctions

Section 4. Whenever the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The action may be brought in the superior court of the county in which such person resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person has no place of business within the commonwealth. If more than one person is joined as a defendant, such action may be brought in the superior court of the county where any one defendant resides or has his principal place of business, or in Suffolk county. Said court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice. If the court finds that a person has employed any method, act or practice which he knew or should have known to be in violation of said section two, the court may require such person to pay to the commonwealth a civil penalty of not more than five thousand dollars for each such violation and also may require the said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorneys' fees. If the court finds any method, act, or practice unlawful with regard to any security or any contract of sale of a commodity for future delivery as defined in section two, the court may issue such orders or judgments as may be necessary to restore any person who has suffered any ascertainable loss of any moneys or property, real or personal, or up to three but not less than two times that amount if the court finds that the use of the act or practice was a willful violation of said section two, a civil penalty to be paid to the commonwealth of not more than five

thousand dollars for each such violation, and also may require said person to pay the reasonable costs of investigation and litigation of such violation, including reasonable attorneys fees.

At least five days prior to the commencement of any action brought under this section, except when a temporary restraining order is sought, the attorney general shall notify the person of his intended action, and give the person an opportunity to confer with the attorney general in person or by counsel or other representative as to the proposed action. Such notice shall be given the person by mail, postage prepaid, to his usual place of business, or if he has no usual place of business, to his last known address.

Any district attorney or law enforcement officer receiving notice of any alleged violation of this chapter or of any violation of an injunction or order issued in an action brought under this section shall immediately forward written notice of the same together with any information that he may have to the office of the attorney general.

Any person who violates the terms of an injunction or other order issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than ten thousand dollars for each violation. For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the attorney general acting in the name of the commonwealth may petition for recovery of such civil penalty.

G.L. c. 93A, § 9

Civil actions and remedies; class action; demand for relief; damages; costs; exhausting administrative remedies

Section 9. (1) Any person, other than a person entitled to bring action under section eleven of this chapter, who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder or any person whose rights are affected by another person violating the provisions of clause (9) of section three of chapter one hundred and seventy-six D<\/centy>;;;MI;;0000000;<\/centr> may 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.

(2) Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs.

(3) At least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent. Any person receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written

tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner. In all other cases, if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two. For the purposes of this chapter, the amount of actual damages to be multiplied by the court shall be the amount of the judgment on all claims arising out of the same and underlying transaction or occurrence, regardless of the existence or nonexistence of insurance coverage available in payment of the claim. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper. The demand requirements of this paragraph shall not apply if the claim is asserted by way of counterclaim or cross-claim, or if the prospective respondent does not maintain a place of business or does not keep assets within the commonwealth, but such respondent may otherwise employ the provisions of this section by making a written offer of relief and paying the rejected tender into court as soon as practicable after receiving notice of an action commenced under this section. Notwithstanding any other provision to the contrary, if the court finds any method, act or practice unlawful with regard to any security or any contract of sale of a commodity for future delivery as defined in section two, and if the court finds for the petitioner, recovery shall be in the amount of actual damages.

(3A) 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 herein provided. The demand requirements and provision for tender of offer of settlement provided in paragraph (3)

shall also be applicable under this paragraph, except that no rights to equitable relief shall be created under this paragraph, nor shall a person asserting a claim hereunder be able to assert any claim on behalf of other similarly injured and situated persons as provided in paragraph (2).

(4) If the court finds in any action commenced hereunder that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action; provided, however, the court shall deny recovery of attorney's fees and costs which are incurred after the rejection of a reasonable written offer of settlement made within thirty days of the mailing or delivery of the written demand for relief required by this section.

[There is no paragraph (5).]

(6) Any person entitled to bring an action under this section shall not be required to initiate, pursue or exhaust any remedy established by any regulation, administrative procedure, local, state or federal law or statute or the common law in order to bring an action under this section or to obtain injunctive relief or recover damages or attorney's fees or costs or other relief as provided in this section. Failure to exhaust administrative remedies shall not be a defense to any proceeding under this section, except as provided in paragraph seven.

(7) The court may upon motion by the respondent before the time for answering and after a hearing suspend proceedings brought under this section to permit the respondent to initiate action in which the petitioner shall be named a party before any appropriate regulatory board or officer providing adjudicatory hearings to complainants if the respondent's evidence indicates that:

(a) there is a substantial likelihood that final action by the court favorable to the petitioner would require of the respondent conduct or practices that would disrupt or be inconsistent with a regulatory scheme that regulates or covers the actions or transactions

complained of by the petitioner established and administered under law by any state or federal regulatory board or officer acting under statutory authority of the commonwealth or of the United States; or

(b) that said regulatory board or officer has a substantial interest in reviewing said transactions or actions prior to judicial action under this chapter and that the said regulatory board or officer has the power to provide substantially the relief sought by the petitioner and the class, if any, which the petitioner represents, under this section.

Upon suspending proceedings under this section the court may enter any interlocutory or temporary orders it deems necessary and proper pending final action by the regulatory board or officer and trial, if any, in the court, including issuance of injunctions, certification of a class, and orders concerning the presentation of the matter to the regulatory board or officer. The court shall issue appropriate interlocutory orders, decrees and injunctions to preserve the status quo between the parties pending final action by the regulatory board or officer and trial and shall stay all proceedings in any court or before any regulatory board or officer in which petitioner and respondent are necessarily involved. The court may issue further orders, injunctions or other relief while the matter is before the regulatory board or officer and shall terminate the suspension and bring the matter forward for trial if it finds (a) that proceedings before the regulatory board or officer are unreasonably delayed or otherwise unreasonably prejudicial to the interests of a party before the court, or (b) that the regulatory board or officer has not taken final action within six months of the beginning of the order suspending proceedings under this chapter.

(8) Except as provided in section ten, recovering or failing to recover an award of damages or other relief in any administrative or judicial proceeding, except proceedings authorized by this section, by any person entitled to bring an action under this section, shall not constitute a bar to, or limitation upon relief authorized by this section.

G.L. c. 93A, § 11

Persons engaged in business; actions for unfair trade practices; class actions; damages; injunction; costs

Section 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.

Such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property.

Any persons entitled to bring such action may, if the use or employment of the unfair method of competition or the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective, practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such a manner as the court directs.

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.

If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the use or employment of the method of competition or the act or practice was a willful or knowing violation of said section two. For the purposes of this chapter, the amount of actual damages to be multiplied by the court shall be the amount of the judgment on all claims arising out of the same and underlying transaction or occurrence regardless of the existence or nonexistence of insurance coverage available in payment of the claim. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper. The respondent may tender with his answer in any such action a written offer of settlement for single damages. If such tender or settlement is rejected by the petitioner, and if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner, then the court shall not award more than single damages.

If the court finds in any action commenced hereunder, that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs incurred in said action.

In any action brought under this section, in addition to the provisions of paragraph (b) of section two, the court shall also be guided in its interpretation of unfair

methods of competition by those provisions of chapter ninety-three known as the Massachusetts Antitrust Act.

No action shall be brought or maintained under this section unless the actions and transactions constituting the alleged unfair method of competition or the unfair or deceptive act or practice occurred primarily and substantially within the commonwealth. For the purposes of this paragraph, the burden of proof shall be upon the person claiming that such transactions and actions did not occur primarily and substantially within the commonwealth.

G.L. c. 151B, § 5

Complaints; procedure; limitations; bar to proceeding; award of damages

Section 5. Any person claiming to be aggrieved by an alleged unlawful practice or alleged violation of clause (e) of section thirty-two of chapter one hundred and twenty-one B or sections ninety-two A, ninety-eight and ninety-eight A of chapter two hundred and seventy-two may, by himself or his attorney, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful practice complained of or the violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A which shall set forth the particulars thereof and contain such other information as may be required by the commission. The attorney general may, in like manner, make, sign and file such complaint. The commission, whenever it has reason to believe that any person has been or is engaging in an unlawful practice or violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A, may issue such a complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this chapter, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

After the filing of any complaint, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith. If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten days after such service, file with the commission a written request for a preliminary hearing before the commission to determine probable cause for crediting the allegations of the complaint, and the commission shall allow such request as a matter

of right; provided, however, that such a preliminary hearing shall not be subject to the provisions of chapter thirty A. If such commissioner shall determine after such investigation or preliminary hearing that probable cause exists for crediting the allegations of a complaint relative to a housing practice, the commissioner shall immediately serve notice upon the complainant and respondent of their right to elect judicial determination of the complaint as an alternative to determination in a hearing before the commission. If a complainant or respondent so notified wishes to elect such judicial determination, he shall do so in writing within twenty days of receipt of the said notice. The person making such election shall give notice of such election to the commission and to all other complainants and respondents to whom the probable cause finding relates. The commission, upon receipt of such notice, shall dismiss the complaint pending before it without prejudice and the complainant shall be barred from subsequently bringing a complaint on the same matter before the commission. If any complainant or respondent elects judicial determination as aforesaid, the commission shall authorize, and not later than thirty days after the election is made the attorney general shall commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred. Any complainant may intervene as of right in said civil action. If the court in such civil action finds that a discriminatory housing practice has occurred or is about to occur, the court may grant any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section nine. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under said section nine shall also accrue to that aggrieved person in a civil action under this section. If such commissioner shall determine after such investigation or preliminary hearing that probable cause exists for crediting the allegations of any complaint and no complainant or respondent has elected judicial determination of the matter, he shall immediately endeavor to eliminate the unlawful practice complained of or the violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A by conference, conciliation and persuasion. The members of the commission and its staff

shall not disclose what has occurred in the course of such endeavors, provided that the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. In case of failure so to eliminate such practice or violation, or in advance thereof if in his judgment circumstances so warrant, he shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission, at a time and place to be specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it. Before or after a determination of probable cause hereunder such commissioner may also file a petition in equity in the superior court in any county in which the unlawful practice which is the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, or in Suffolk county, seeking appropriate injunctive relief against such respondent, including orders or decrees restraining and enjoining him from selling, renting or otherwise making unavailable to the complainant any housing accommodations or public accommodations with respect to which the complaint is made, pending the final determination of proceedings under this chapter. An affidavit of such notice shall forthwith be filed in the clerk's office. The court shall have power to grant such temporary relief or restraining orders as it deems just and proper. The case in support of the complaint shall be presented before the commission by one of its attorneys or agents or by an attorney retained by the complainant, and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the commission in such case except when necessary to decide an appeal to the full commission; and the aforesaid endeavors at conciliation shall not be received in evidence. If an investigating commissioner determines that probable cause exists to credit the allegations of a complainant that a respondent has refused to sell, rent or lease, or to negotiate in the sale, rental, or

leasing of, housing accommodations or commercial space and if he determines that such respondent is a nonresident of the commonwealth and cannot be personally served with process in the commonwealth, such investigating commissioner may file a petition in equity in the nature of an in rem proceeding seeking appropriate injunctive relief against such property with respect to which a complaint has been made, including orders or decrees restraining and enjoining any sale, rental, lease, or other disposition of such property which would render it unavailable to the complainant pending the final determination of proceedings under this chapter. Such commissioner shall send by registered mail, with return receipt requested, a copy of such petition to the last address of such respondent known to the commissioner. An affidavit of compliance herewith, and the respondent's return receipt or other proof of actual notice, if received, shall be filed in the case on or before the return day of the process or within such further time as the court may allow. A copy of the order or decree of the court running against such property of a nonresident respondent shall be recorded in the registry of deeds in the county wherein such housing accommodations or commercial space is located, and a copy of such order or decree shall be attached in a conspicuous place to the property which has been the subject of a complaint under section four by the sheriff of the county wherein such property is located, or by his authorized agent or employee. Any person purchasing housing accommodations or commercial space, subsequent to the recording of the order or decree in the registry of deeds, shall be, as a matter of law, bound by the terms of any order which the commission has made or may make relating to such property which has been the subject of an order or decree of the superior court. Any person renting or leasing housing accommodations or commercial space subsequent to the attachment of a copy of an order or decree referred to above by the sheriff of the county wherein such property is located or by his authorized agent or employee shall be, as a matter of law, bound by the terms of any order which the commission has made or may make relating to such property. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. In the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel.

The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed at the request of any party. If, upon all the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful practice as defined in section four or violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful practice or violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A to take such affirmative action, including but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as, in the judgment of the commission, will effectuate the purposes of this chapter or of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A, and including a requirement for report of the manner of compliance. Such cease and desist orders and orders for affirmative relief may be issued to operate prospectively. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful practice or violation of said clause (e) of said section thirty-two or said sections ninety-two A, ninety-eight and ninety-eight A, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. In addition to any such relief, the commission shall award reasonable attorney's fees and costs to any prevailing complainant. A copy of its order shall be delivered in all cases to the attorney general and such other public officers as the commission deems proper. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within 300 days after the alleged act of discrimination. The institution of proceedings under this section, or an order thereunder, shall not be a bar

to proceedings under said sections ninety-two A, ninety-eight and ninety-eight A, nor shall the institution of proceedings under said sections ninety-two A, ninety-eight and ninety-eight A, or a judgment thereunder, be a bar to proceedings under this section.

If upon all the evidence at any such hearing the commission shall find that a respondent has engaged in any such unlawful practice relative to housing or real estate or violated clause (e) of said section thirty-two it may, in addition to any other action which it may take under this section, award the petitioner damages, which damages shall include, but shall not be limited to, the expense incurred by the petitioner for obtaining alternative housing or space, for storage of goods and effects, for moving and for other costs actually incurred by him as a result of such unlawful practice or violation. Any person claiming to be aggrieved by such an award of damages may, notwithstanding the provisions of section six and within ten days of notice of such award, bring a petition in the municipal court of the city of Boston or in the district court within the judicial district of which the respondent resides, addressed to the justice of the court, praying that the action of the commission in awarding damages be reviewed by the court. After such notice to the parties as the court deems necessary, it shall hear witnesses, review such action, and determine whether or not upon all the evidence such an award was justified and thereafter affirm, modify or reverse the order of the commission. The decision of the court shall be final and conclusive upon all the parties as to all matters of fact.

If, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent:

(a) in an amount not to exceed $10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice;

(b) in an amount not to exceed $25,000 if the respondent has-been adjudged to have committed one other discriminatory practice during the 5-year period ending on the date of the filing of the complaint; and

(c) in an amount not to exceed $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory practices during the 7-year period ending on the date of the filing of the complaint. Notwithstanding the aforesaid provisions, if the acts constituting the discriminatory practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory practice, then the civil penalties set forth in clauses (b) and (c) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.

G.L. c. 151B, § 9

Construction and enforcement of chapter; inconsistent laws; exclusiveness of statutory procedure; civil remedies; speedy trial; attorney's fees and costs; damages

Section 9. This chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply, but nothing contained in this chapter shall be deemed to repeal any provision of any other law of this commonwealth relating to discrimination; but, as to acts declared unlawful by section 4, the administrative procedure provided in this chapter under section 5 shall, while pending, be exclusive; and the final determination on the merits shall exclude any other civil action, based on the same grievance of the individual concerned.

Any person claiming to be aggrieved by a practice made unlawful under this chapter or under chapter one hundred and fifty-one C, or by any other unlawful practice within the jurisdiction of the commission, may, at the expiration of ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than three years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive relief or both in the superior or probate court for the county in which the alleged unlawful practice occurred or in the housing court within whose district the alleged unlawful practice occurred if the unlawful practice involves residential housing. The petitioner shall notify the commission of the filing of the action, and any complaint before the commission shall then be dismissed without prejudice, and the petitioner shall be barred from subsequently bringing a complaint on the same matter before the commission. Any person claiming to be aggrieved by an unlawful practice relative to housing under this chapter, but who has not filed a complaint pursuant to section five, may commence a civil action in the superior or probate court for the county in which the alleged unlawful practice occurred or in the housing court within whose district the alleged unlawful practice occurred; provided, however, that such action shall not be commenced later than one year after the alleged

unlawful practice has occurred. An aggrieved person may also seek temporary injunctive relief in the superior, housing or probate court within such county at any time to prevent irreparable injury during the pendency of or prior to the filing of a complaint with the commission.

An action filed pursuant to this section shall be advanced for a speedy trial at the request of the petitioner. If the court finds for the petitioner, it may award the petitioner actual and punitive damages. If the court finds for the petitioner it shall, in addition to any other relief and irrespective of the amount in controversy, award the petitioner reasonable attorney's fees and costs unless special circumstances would render such an award unjust. The commission shall, upon the filing of any complaint with it, notify the aggrieved person of his rights under this section.

Any person claiming to be aggrieved by a practice concerning age discrimination in employment made unlawful by section four may bring a civil action under this section for damages or injunctive relief, or both, and shall be entitled to a trial by jury on any issue of fact in an action for damages regardless of whether equitable relief is sought by a party in such action. If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the act or practice complained of was committed with knowledge, or reason to know, that such act or practice violated the provisions of said section four. The provisions set forth in the first, second and third paragraphs shall be applicable to such complaint or action to the extent that such provisions do not conflict with the provisions set forth in this paragraph.

G.L. c. 185C, § 3

Concurrent jurisdiction; powers of superior court department; enforcement authority

Section 3. The divisions of the housing court department shall have common law and statutory jurisdiction concurrent with the divisions of the district court department and the superior court department of all crimes and of all civil actions arising in the city of Boston in the case of that division, in the counties of Berkshire, Franklin, Hampden and Hampshire in the case of the western division and within the cities and towns included in the Worcester county division, northeastern division and southeastern division, in the case of those divisions, under chapter forty A, sections twenty-one to twenty-five, inclusive, of chapter two hundred and eighteen, sections fourteen and eighteen of chapter one hundred and eighty-six and under so much of sections one hundred and twenty-seven A to one hundred and twenty-seven F, inclusive, and sections one hundred and twenty-seven H to one hundred and twenty-seven L, inclusive, of chapter one hundred and eleven, so much of chapter ninety-three A, so much of section sixteen of chapter two hundred and seventy, so much of chapters one hundred and forty-three, one hundred and forty-eight, and two hundred and thirty-nine, jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods or services situated therein or furnished in connection there with or the use of any real property and activities conducted there on as such use affects the health, welfare and safety of any resident, occupant, user or member of the general public and which is subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances. The divisions of the housing court department shall also have jurisdiction of all housing problems, including all contract and tort actions which affect the health, safety and welfare of the occupants or owners thereof, arising within and affecting residents in the city of

Boston, in the case of that division, Berkshire, Franklin, Hampden and Hampshire counties, in the case of the western division and within the cities and towns included in the Worcester county division, northeastern division and southeastern division, in the case of those divisions, and shall also have jurisdiction in equity, concurrent with the divisions of the district court department, the divisions of the probate and family court department, the superior court department, the appeals court, and the supreme judicial court, of all cases and matters so arising. The divisions of the housing court department, subject to section 14 of chapter 244, shall also have jurisdiction of defenses or counterclaims by any party entitled to notice of sale under said section 14 of said chapter 244 or by any party entitled to notice of sale and who continues to occupy the mortgaged premises.

In all matters within their jurisdiction, the divisions of the housing court department shall have all the powers of the superior court department including the power to grant temporary restraining orders and preliminary injunctions as justice and equity may require. The divisions shall have like power and authority for enforcing orders, sentences and judgments made or pronounced in the exercise of any jurisdiction vested in them, and for punishing contempts of such orders, sentences and judgments and other contempts of their authority, as are vested for such or similar purposes in the supreme judicial court or superior court department.

G.L. c. 185C, § 20

Transfer of civil actions

Section 20. Any civil action within the jurisdiction of the housing court department which is pending in another court department may be transferred to the housing court department by any party thereto.

Whenever cross actions between the same parties or two or more actions, including for the purposes hereof other department proceedings, arising out of or connected with the same housing accommodation are pending, one or more in the housing court department, the district court department, the probate and family court department, or in the superior court department, the chief justice of the housing court or the first justice upon motion of any party to any of such actions, may order that the action or actions pending in the district court department and in the probate and family court department and in the superior court department with all papers relating thereto, be transferred to the housing court department; and such action or actions shall thereafter proceed in the housing court department as though originally entered there.

G.L. c. 231, § 118

Temporary appellate relief from interlocutory orders; appeals to appeals court or supreme judicial court

Section 118. A party aggrieved by an interlocutory order of a trial court justice in the superior court department, the housing court department, the land court department, the juvenile court department or the probate and family court department may file, within thirty days of the entry of such order, a petition in the appropriate appellate court seeking relief from such order. A single justice of the appellate court may, in his discretion, grant the same relief as an appellate court is authorized to grant pending an appeal under section one hundred and seventeen. If the petition is filed with respect to a discovery order and is denied, the single justice may, after such hearing as the single justice in his discretion deems appropriate, require the petitioning party or the attorney advising the petition or both of them to pay to the party who opposed the petition the reasonable expenses incurred in opposing the petition, including attorney's fees, unless the court finds that the filing of the petition was substantially justified or that other circumstances make an award of expenses unjust.

A party aggrieved by an interlocutory order of a trial court justice in the superior court department, the housing court department, the land court department or the probate and family court department, granting, continuing, modifying, refusing or dissolving a preliminary injunction, or refusing to dissolve a preliminary injunction, or a party aggrieved by an interlocutory order of a single justice of the appellate court granting a petition for relief from such an order, may appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the supreme judicial court, which shall affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be just under the circumstances. An appeal under this paragraph shall be taken within thirty days of the date of the entry of the interlocutory order and in accordance with the Massachusetts rules of appellate procedure. Pursuant to action taken by the appellate

court the cause shall be remanded to the trial court for further proceedings.

The filing of a petition hereunder shall not suspend the execution of the order which is the subject of the petition, except as otherwise ordered by a single justice of the appellate court.

24 C.F.R. § 115.200

Purpose.

This subpart implements section 810(f) of the Fair Housing Act. The purpose of this subpart is to set forth:

(a) The basis for agency interim certification and certification;

(b) Procedures by which a determination is made to grant interim certification or certification;

(c) How the Department will evaluate the performance of an interim and certified agency;

(d) Procedures that the Department will utilize when an interim or certified agency performs deficiently;

(e) Procedures that the Department will utilize when there are changes limiting the effectiveness of an interim or certified agency's law;

(f) Procedures for renewal of certification; and

(g) Procedures when an agency requests interim certification or certification after a withdrawal.

24 C.F.R § 115.201

The two phases of substantial equivalency certification.

Substantial equivalency certification is granted if the Department determines that a state or local agency enforces a law that is substantially equivalent to the Fair Housing Act with regard to substantive rights, procedures, remedies, and the availability of judicial review. The Department has developed a two-phase process of substantial equivalency certification.

(a) Adequacy of Law. In the first phase, the Assistant Secretary will determine whether, on its face, the fair housing law that the agency administers provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act. An affirmative conclusion may result in the Department offering the agency interim certification. An agency must obtain interim certification prior to obtaining certification.

(b) Adequacy of Performance. In the second phase, the Assistant Secretary will determine whether, in operation, the fair housing law that the agency administers provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act. An affirmative conclusion will result in the Department offering the agency certification.

24 C.F.R. § 115.204

Criteria for adequacy of law.

(a) In order for a determination to be made that a state or local fair housing agency administers a law, which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint, the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint, the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the statute or ordinance, together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaints, and require that:

(i) The agency commences proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigates the allegations of the complaint and complete the investigation within the timeframe established by section 810(a)(1)(B)(iv) of the Act or comply with the notification requirements of section 810(a)(1)(C) of the Act;

(iii) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so;

(iv) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent, the complainant, and the agency and shall require the approval of the agency;

(v) Each conciliation agreement shall be made public, unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purpose of the law.

(3) Not place excessive burdens on the aggrieved person that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject an aggrieved person to costs, criminal penalties, or fees in connection with the filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to section 803 of the Act.

(5) Provide the same protections as those afforded by sections 804, 805, 806, and 818 of the Act, consistent with HUD's implementing regulations found at 24 CFR part 100.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the state or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have the authority to:

(i) Grant or seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint, if such action is necessary to carry out the purposes of the law;

(ii) Issue and seek enforceable subpoenas;

(iii) Grant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction;

(v) Provide an administrative proceeding in which a civil penalty may be assessed or provide adjudication in court, at agency expense, allowing the assessment of punitive damages against the respondent.

(2) If an agency's law offers an administrative hearing, the agency must also provide parties an election option

substantially equivalent to the election provisions of section 812 of the Act.

(3) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(4) Judicial review of a final agency order must be in a court with authority to:

(i) Grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper;

(ii) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceeding; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the state or local law prohibit discrimination on the basis of familial status does not require that the state or local law limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The state or local law may assure that no prohibition of discrimination because of familial status applies to housing for older persons, as described in 24 CFR part 100, subpart E.

(e) A determination of the adequacy of a state or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the fair housing law by competent authorities will be considered in making this determination.

(f) A law will be found inadequate "on its face" if it permits any of the agency's decision-making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision-making authority" includes but is not limited to:

(1) Acceptance of a complaint;

(2) Approval of a conciliation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in § 115.204(a)(2)(iii) or (b)(1); and

(5) Any decision-making regarding whether a particular matter will or will not be pursued.

(g) The state or local law must provide for civil enforcement of the law by an aggrieved person by the commencement of an action in an appropriate court at least one year after the occurrence or termination of an alleged discriminatory housing practice. The court must be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order; and

(3) Allow reasonable attorney's fees and costs.

(h) If a state or local law is different than the Act in a way that does not diminish coverage of the Act, including, but not limited to, the protection of additional prohibited bases, then the state or local law may still be found substantially equivalent.

Trial Court Rule XII

Interdepartmental Judicial Assignments

Rule introduction
This Rule governs the method for requesting interdepartmental judicial assignments. Pursuant to G.L. c. 211B, section 9, the Chief Justice for Administration and Management of the Trial Court (hereafter, "CJAM") is authorized to assign a judge appointed to any Department of the Trial Court to sit in any other Department of the Trial Court for such period or periods of time as will best promote the speedy dispatch of judicial business.

The assignments may authorize a judge to sit simultaneously as a judge of several Departments for the purpose of reducing delay and duplication in actions pending in the Trial Court.

As used herein, the term "party" shall mean the attorney of record for a party, if represented by counsel, or, if a party is not represented by counsel, the party acting pro se.

1. Interdepartmental assignment and consolidation of cases -- purpose and procedure
If two or more actions are pending in different departments of the Trial Court, and if a judge, Clerk-Magistrate, register, or party determines that the separate actions are related actions involving substantially the same or similar issues and parties, the judge, Clerk-Magistrate, register, or party may request that the Chief Justice for Administration and Management make an appropriate interdepartmental assignment so that one judge may hear all related matters. The requests should be directed to the CJAM, with copies to the Chief Justice of each Department in which the related actions are pending.

Such assignments shall be made to accomplish one or more of the following purposes:

to promote speedy disposition of cases, reduce duplication of hearings and promote judicial economy when each pending action will require a hearing or trial;

to afford complete and permanent relief which might not be obtained unless the actions are consolidated for hearing and heard by one judge;
to effectuate a proposed settlement of one case through the filing of a subsequent action in another court department; or
where there is some other reason, consistent with the speedy and efficient dispatch of judicial business, why the cases should be assigned to and heard by one judge.
2. Content and timing of request
If a request for an interdepartmental assignment is made by one or more parties, the request shall be made in a letter to the CJAM and the Chief Justices of the Departments in which the actions are pending. The letter should identify by title, name of court division, and docket number each of the related cases; list all parties and counsel of record, with addresses; describe the nature of the cases; and include a specific, individualized statement of reasons why the separate actions are deemed related and an interdepartmental assignment would be appropriate, with particular attention to the latter in situations in which at least one of the related cases will not require a hearing or trial. Every request must be accompanied by a copy of the current docket entries in the related cases, with the most recent court activity listed thereon. Requests which are submitted without current docket sheets need not be considered.

A party making a request pursuant to this Rule shall at the same time send a copy of such request to all parties in the related cases, and to any judge who has been specially assigned to any of the cases, and, as to any case to which no judge has been specially assigned, to the first justice of the court in which that case is pending. Any party opposing the request will have seven days from receipt of the request to submit to the CJAM and Chief Justices of the respective Departments a letter in opposition with a statement of the reasons therefor.

Except for good cause shown and described in the request, a request for an interdepartmental judicial assignment will not be considered if made within 60 days prior to an established trial date. Cases shall not be removed from a trial list solely because a request for an interdepartmental judicial assignment is pending.

3. Applicable considerations
Factors to be considered in determining whether actions are related include the following:

whether the actions involve the same parties (including children) and the same attorneys;
whether, in child welfare cases in which all parties are not identical, the person who is not a party to one of the cases sought to be consolidated is a parent, foster parent, guardian, relative or caretaker who seeks custody, visitation, or related orders regarding the child;
whether the actions involve common, or substantially the same or similar, questions of law and fact;
whether the witnesses and the evidence to be presented in the separate actions will be the same or similar; and
whether the requested forms of relief are similar or related.
Factors to be considered in determining whether allowance of the request would tend to promote the speedy dispatch of court business and to reduce delay and duplication include the following:

whether the actions are in similar stages of readiness;
whether either action has an established trial date;
whether the request was made to take advantage of an existing trial date in one case for use in the other case(s);
whether allowance of the request might require that an established trial date for one of the cases be rescheduled to afford additional time for preparation or for trial of the other, unscheduled case(s); and
whether, notwithstanding the provisions of this Rule, a party already has caused a case to be removed from a trial list by informing the court that a request for an interdepartmental judicial assignment was or will be made.
Additional factors to be considered may include the following:

whether, if the request is allowed, there will be a continuing or long-term need for a judge of one court Department to exercise the powers normally vested within another court Department, or whether the assignment only will be needed for one hearing;

especially in cases involving child welfare, whether, due to special assignment to, or continuing familiarity with, one of the cases, it would be appropriate for the same judge to hear the related matter(s) to promote case continuity or permanency planning;
whether the request should have been made earlier in order to reduce resulting delay; and
any other special considerations that are not apparent from the docket entries or other portions of the written request.

4. Action by Chief Justices

Upon receipt of a complete request, the Chief Justices will review the request and any letters in opposition to determine whether the cases are related and whether the efficient administration of judicial business would be served by having the several actions heard by one judge. The Chief Justices will then forward their recommendations to the CJAM. When possible, the recommendations shall be forwarded to the CJAM within 30 days of receipt of a complete request.

5. Action by CJAM

The CJAM will review the request and the recommendations of the Chief Justices, and, if the interests of the Trial Court and of the parties would be served thereby, may make an appropriate order of assignment which would allow one judge to hear the related actions. When possible, the order of assignment or disallowance of the request shall be made by the CJAM within 45 days of receipt of a complete request. In cases with an established trial date, the decision on the request shall be made prior to the trial date. The CJAM will notify the Chief Justices and all parties of his decision on each request. Notwithstanding the provisions of this paragraph, in no event shall the pendency of a request be the sole cause for a case to be removed from a trial list.

6. Presumption in certain cases

There shall be a presumption in favor of allowance of the request if the parties to all the actions sought to be consolidated are identical, if each case will require a hearing or trial, and if the issues are substantially related. This presumption shall not apply with respect to the consolidation of hearings or reviews conducted pursuant to G.L. c. 119, § 29B with post-decree reviews of G.L. c. 210, § 3 matters.

7. Authority of CJAM in absence of a request
The CJAM may make such assignments in the absence of a request by a judge, Clerk-Magistrate, register, or party.

8. Requests to have related actions heard by single justice

This rule shall not apply to a request by a party for the interdepartmental judicial assignment of a justice of the Superior Court Department to hear related actions pending in the Superior Court Department, the District Court Department and/or the Boston Municipal Court Department nor shall it apply to a joint request by all the principal parties for an interdepartmental assignment of a justice of the District Court Department or the Boston Municipal Court Department to hear related actions pending in the Superior Court Department, the District Court Department and/or the Boston Municipal Court Department. A party or parties seeking to have such related actions heard by a single justice shall file a motion to transfer in the Superior Court Department pursuant to G.L. c. 223, Sec. 2B and then a motion to consolidate pursuant to Mass.R.Civ.P. 42(a) in the court to which the transfer is made.