



July 22, 2015

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c/o Attorney John M. Connors
District Court Administrative Office
Edward W. Brooke Courthouse
24 New Chardon St.
Boston, MA 02114

Re: Comments on Proposed Increase to the “Procedural Amount” for District Court and Boston Municipal Court Civil Money Damage Actions

Dear Chief Justice Carey,

On behalf of the Boston Bar Association (BBA), I thank you for the opportunity to comment on the proposed increase in the procedural amount for civil money damage actions in the District and Boston Municipal Courts.

The proposed revision was distributed to all BBA Sections. The BBA’s Litigation and Real Estate Law Sections discussed the issue at length and section members proposed the attached comments.

Please note that the enclosed document does not constitute or reflect a position of the BBA as a whole, but rather reflects the views of individual members of the Litigation and Real Estate Law Sections. We hope that they may be useful to the Trial Court as it considers this proposed revision.

Thank you for providing members of the bar with an opportunity to weigh in on this important proposed change, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

Richard M. Page, Jr.
Executive Director

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**Comments of the Boston Bar Association's Litigation and Real Estate Law Sections
on the Proposed Increase to the "Procedural Amount" for District Court and Boston
Municipal Court Civil Money Damage Actions**

(7/22/15)

In response to an invitation for comments from the Chief Justice of the Trial Court, the Boston Bar Association's Litigation and Real Estate Law Sections reviewed the proposal to increase the "procedural amount" for District Court and BMC civil money damage actions from \$25,000 to \$50,000.

Members of the Litigation and Real Estate Sections are generally concerned about the change and offer the following specific comments:

Members of the Litigation Section expressed concerns with the rule revision comment procedures, noting that the rule change represents a significant shift in caseload, but the notice for comment has not been widely distributed and is not readily accessible on the Trial Court's website. They also note that the notice for comment states that the Chief Justice of the Trial Court would ask the Supreme Judicial Court to exercise its statutory authority pursuant only to G.L. c. 218 §19 to increase the procedural amount for District Court and the BMC. However, unless the SJC also changes the procedural amount for Superior Court jurisdiction under G.L. c. 212 §3, these courts would have concurrent jurisdiction for all cases between \$25,000 and \$50,000.

Both the Litigation and Real Estate Law Sections were concerned with the case shift that would result from the rule change. They were uncertain whether the District Court and BMC have adequate resources and administrative support to handle the influx of additional civil cases that will be filed as a result of the proposed increase given the demands of their current criminal dockets. Both Sections noted that the Superior Courts often benefit from more staff, both in the clerk's office and the courtroom, in addition to some access to full time law clerks, who can assist the judges in the performance of their duties. Even with a decline in civil caseload at the District Court and the BMC level, these courts may have limited ability to absorb the influx of civil cases where judges have to ensure the constitutional rights and needs of a large number of criminal defendants who are in custody or on their way into custody and staff are often focused on addressing issues related to criminal defendants. This change may have the biggest impact on pro se litigants who may, anecdotally, receive more help in Superior Court and would now likely have more cases in District Court or BMC.

Members of the Litigation Session expressed interest in alternative means of jurisdictional shifts other than damages amount, as this is often unrelated to case complexity. They recommended that the Trial Court should explore dividing jurisdiction based on case type or subject matter, in addition to damages amounts. They also expressed interest in expansion of Superior Court procedural rights to District Court and the BMC. Procedures such as attorney voir dire,

statement of desired damages amount in open court, and judges' ability to sanction frivolous claims should not be limited to the Superior Court, especially as a significant number of civil cases that would otherwise have benefitted from these rights in Superior Court will shift to the District Court and BMC. As a potential result of this shift, motion sessions may become clogged with additional motions to move cases either into, or out of, the District or Superior Court levels depending on the goals of litigators – those seeking faster resolution may argue for District Court jurisdiction where cases must be completed in one year; those seeking more damages or the benefit of certain procedural rights may opt for Superior Court jurisdiction. Members felt that plaintiffs and defendants may make arguments based more on jurisdiction and less on the actual merits of their cases.