

# EXHIBIT 1



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January 19, 2016

Christopher M. Perry  
Law Offices of Brendan J. Perry  
& Associates, P.C.  
P.O. Box 6938  
Holliston, MA 01746

Dear Attorney Perry:

I am writing to respond to your December 4, 2015 letter to Governor Baker concerning unpaid judgments owed by six former Department of Mental Health employees to the estate of your client, Jason Davis. We have looked into the history of this matter. In 1998, a jury found the former employees liable under State and Federal law of intentionally depriving Mr. Davis of his civil rights and awarded Mr. Davis \$100,000 in compensation for his injuries and imposed substantial punitive damages in addition. The Commonwealth itself was not a defendant in the case, and our review does not indicate that the Commonwealth was ever found negligent in supervising the former employees. It appears that in 2014 Governor Patrick twice acted to prevent the Commonwealth from paying a substantial portion of these judgments.


As you know, by law the Commonwealth is prohibited from paying judgments owed by State employees who have been found to have violated a person's civil rights by acting outside the scope of their duties and in a grossly negligent, willful, or malicious manner. See G. L. c. 258, § 9. In effect, the law makes the State responsible only for acts that an employee undertakes on behalf of the State itself and not for acts that the employee undertakes on his or her own bad motives and outside the employee's responsibilities to the State. The rule is essentially the same for private employers and is intended to ensure that employees do not believe themselves free to act unlawfully without fear of personal consequences. Consequently, unless the Legislature acts to explicitly override this general prohibition and appropriate funds for these outstanding judgments, the Commonwealth is unable to pay any part of these awards. We are not aware of any currently pending legislation that would do this.

As the facts of your client's case demonstrate, the legal rule that controls here unfortunately cannot guarantee that an employee found liable for his or her own bad acts will be able to pay whatever judgment a court may award. It would be open to the

OFFICE OF THE GOVERNOR'S LEGAL COUNSEL  
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Legislature to determine based on all of the facts that the outcome in this case warrants suspending the statutory prohibition on paying judgments entered against individual State employees. The Governor would consider whatever the Legislature might choose to enact in this regard.

Very truly yours,



Michael A. Kanah  
Deputy Legal Counsel

# EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO: 12-1607-C

KEVIN MESSIER, Special Personal  
Representative of the Estate of Joshua  
MESSIER,

Plaintiff,

v.

Daniel KERR,  
George BILLADEAU,  
Timothy SOARES,  
Clifford FOSTER,  
James BAKER,  
Derek HOWARD,  
John RAPOSO,  
Christopher REGO,  
Raymond THIBAUT,  
BRIDGEWATER STATE  
HOSPITAL, and  
THE COMMONWEALTH OF  
MASSACHUSETTS  
DEPARTMENT OF CORRECTION

Defendants.

2012 APR 26 PM 3:51  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

#### INTRODUCTION

1. This is a civil rights action in which the plaintiff, Kevin Messier, Special Personal Representative of the Estate of Joshua Messier (hereinafter "Joshua"), seeks relief for the Defendants' violation of Joshua's rights secured by the laws of the United States and the Commonwealth of Massachusetts.
2. On or about May 4, 2009, officers transported Joshua, in restraints, from a

# EXHIBIT 3

# City & Region

THE BOSTON GLOBE SATURDAY, MARCH 26, 2005

## Measure sheltered ex-state official Was defendant in rights lawsuit

By Jonathan Saltzman  
GLOBE STAFF

Governor Mitt Romney and state lawmakers quickly approved a budget amendment last fall that saved a politically connected former state employee from having to pay \$250,000 in damages for retaliating against a whistleblower.

A Suffolk County jury awarded \$750,000 last June to Bijan Mohammadpour, a high-ranking state engineer who said he was humiliated and stripped of job duties after he pointed out hazardous conditions at an asbestos-filled state office building.

The state was ordered to cover two-thirds of the award, but the rest was to be paid by his former boss, Dennis R. Smith, who, the jury concluded, had deliberately violated Mohammadpour's civil rights.

But Smith, a prominent Plymouth Republican who has made regular contributions to GOP candidates and who heads the New England office of the federal General Services Administration, won't have to pay a penny because of a special law passed in September.

In a little-noticed provision included in a supplemental spending bill and mentioning Smith by name, Romney and the overwhelmingly Democratic Legislature provided that the state cover Smith's portion of the damages and his legal expenses, up to \$1 million.

The Romney administration opposed the measure because it believed that Smith "acted in good faith in carrying out his job responsibilities and ... should not

face a potentially catastrophic financial loss," Harry Grossman, general counsel for the Executive Office of Administration and Finance, said in a statement. If the state had not come to Smith's aid, Grossman added, it would have difficulty attracting and retaining talented managers.

Asked whether Smith's political ties had anything to do with it, a Romney spokeswoman declined to comment.

But Mohammadpour and his lawyer said the special provision flies in the face of a 1994 Massachusetts law passed specifically to protect whistleblowers.

"On the one hand, the Commonwealth is saying, 'We don't like people who retaliate against whistleblowers,'" said his lawyer, Eric Maxwell, who said he only learned this month about the measure's passage. "On the other hand, it's now protecting the guy who went after the whistleblower."

Smith, who has served as regional administrator of the General Services Administration since 2001 and makes \$148,200 a year, did not return phone calls to his office yesterday.

Leslie Greer, a special assistant attorney general who defended Smith and the state in the civil lawsuit, said yesterday that the law was not intended to protect only Smith. She said state officials were worried about managers bolting from their jobs if they

fearful being held personally liable in such suits.

From 1993 to 2001, Smith served as superintendent of the Bureau of State Office Buildings under Governors William W. Weld and Paul Cellucci and Acting Governor Jane Swift. Prior to that, he directed the Boston regional office of the US Department of Education.

A former math teacher, Smith has made several contributions to Republican politicians on the state and federal level in recent years, including \$1,000 to George W. Bush in his first run for president and then \$2,000 in his reelection bid.

Mohammadpour sued the state and Smith in Suffolk Superior Court, citing violations of the state's whistleblower-protection statute and federal and state civil rights laws.

He testified at trial that Smith orchestrated a campaign to discredit him, excluded him from meetings, downgraded his employee evaluations, and barred him from the State House after Mohammadpour drew attention to potentially dangerous asbestos at the Saltonstall State Office Building in 1994. The building was closed in 1999, then gutted and renovated at a cost of \$186 million.

A Newton psychologist hired by Mohammadpour testified that the Iranian-born Danvers engineer, now 52, suffered from panic attacks, depression, and symptoms similar to post-traumatic stress disorder as a result of the retaliation.

Greer countered at trial that Mohammadpour never proved he was punished for complaining about unsafe conditions or met legal standards required to prove that federal and state laws had been broken. Nonetheless, the jury sided with Mohammadpour.

One juror said afterward that she felt Mohammadpour had set an impressive example for other state employees. "I'm honored to have somebody like Bijan making sure that when we come into these buildings, we are safe," said juror Linda Nash.

Mohammadpour, the principal engineer for the Bureau of State Office Buildings, said this week that the special legislation covering Smith's damages could embolden other managers to retaliate against whistleblowers.

"How would you encourage

anybody who's been involved with the Big Dig and they've seen wrongdoing to come out and blow the whistle if the entire government rewards the person who retaliates against the whistleblower?" he said.

Under Massachusetts tort law, the state can typically protect the personal finances of an individual sued for violating civil rights statutes while carrying out his or her job. But the law specifically excludes defendants who "acted in a grossly negligent, willful, or malicious manner."

The jury in Mohammadpour's suit concluded that Smith acted "willfully, deliberately, maliciously, or with reckless disregard" of Mohammadpour's free speech rights by retaliating against him, according to a question posed to the jury.

After the verdict, Greer said, she met with Romney administration officials and the attorney general's office about passing a special law to pick up Smith's portion of the award and legal expenses.

"The problem wasn't so much that they wanted to reimburse Smith," Greer said. "It was that if his stood out there and a former state manager loses his house because of personal liability, who's going to go work for the state?"

Greer said the reason Maxwell was drawing attention to the special law now was because she filed two motions in the past week seeking to have the jury award thrown out in Superior Court.

Fearing that possibility or a reversal of the verdict on appeal, Maxwell wanted to embarrass state officials to extract a big settlement, she said.

Maxwell called that ludicrous, saying that if state officials "weren't embarrassed by the verdict of this jury, then they will never be embarrassed by anything."

Jonathan Saltzman can be reached at jsaltzman@globe.com.