



# News Briefs

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## Gov announces pair of nominees

Gov. Charlie D. Baker announced nominees on Oct. 11 for a seat on the Parole Board and a circuit judgeship on the District Court.

Colette M. Santa was nominated to replace Ina Howard-Hogan on the Parole Board. Santa is chief of transitional services for the Parole Board, a role she has held since March 2016.

A graduate of Pontifical Catholic University of Puerto Rico School of Law, Santa previously worked as a corrections official in Puerto Rico.

Paul G. Pino was nominated for a seat on the District Court. Pino, a graduate of Suffolk University Law School, works for Progressive Casualty Insurance Co. and for Mediation and Arbitration Services in East Falmouth.

## Spring confirmed for District Court

Lowell District Court Assistant Clerk-Magistrate Meghan Streff Spring was confirmed by the Governor's Council on Oct. 11 for a seat on the Woburn District Court.

Spring was confirmed in a 7-1 vote, with Councilor Marilyn M. Petitto Devaney voting against her.

Devaney questioned whether Spring's experience qualified her for a judgeship.

Councilors Eileen R. Duff, Terrence W. Kennedy and Mary E. Hurley responded with statements in support of her nomination.

Spring started her legal career as a Superior Court law clerk before joining the Middlesex County District Attorney's Office. She was a criminal defense lawyer at Spring & Spring from 2007 to 2013.

## Legal error doesn't bar malpractice claim

A Boston law firm should not have been awarded summary judgment on a legal malpractice claim simply because an unfavorable litigation result that its client received was due to a legal error by a foreign court, the Supreme Judicial Court has ruled.

The client, Kiribati Seafood Co., alleged that the law firm, Dechert, negligently failed to provide a French appellate court with the evidence the court deemed necessary for Kiribati to prevail on a claim, which resulted in the court's

In the subsequent legal malpractice proceeding, Superior Court Judge Kenneth W. Salinger granted summary judgment to Dechert and denied partial summary judgment to Kiribati. The judge determined that the French appellate court committed an error of law in requiring the evidence and that, even if Dechert had been negligent in failing to provide the evidence to the court, Kiribati could not recover damages for Dechert's negligence because the court's legal error was a superseding cause of the adverse decision.

"We conclude that an error of law under these circumstances is a concurrent, not a superseding, proximate cause and that the judge therefore erred in granting summary judgment to Dechert and denying partial summary judgment to Kiribati," Chief Justice Ralph D. Gants wrote for the unanimous SJC.

"[W]here a court has indicated that it has a different view of the law from that of the attorney, and where the client can prevail on the facts even under that different view, an attorney is negligent if he or she forfeits that opportunity by failing to argue in the alternative," Gants stated.

Gants said the SJC concluded that "where the court of appeals ruled against Kiribati because Dechert failed to submit the evidence it had been furnished that would have proved Kiribati's disproportionate payment of attorney's fees and its release of valuable claims against Lloyd's, Dechert's failure to provide the court with this evidence may be found to be the concurrent proximate cause of the court's adverse decision."

The 25-page decision is *Kiribati Seafood Company, LLC, et al. v. Dechert LLP*, Lawyers Weekly No. 10-161-17. The full text of the ruling and Lawyers Weekly's opinion digest of the case can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

— THOMAS E. EGAN

## Premium pay denied for theater employees

A Superior Court judge who ruled in August that employees of Showcase Cinemas are entitled to "time and a half" for working on New Year's Day, Columbus Day and Veterans' Day has since decided otherwise.

Showcase filed a motion for reconsideration, arguing that its operation on those three holidays is governed by a section of the General Laws that does not require premium pay.

Judge Edward P. Leibensperger agreed.



PHOTO: CHRIS SOLDT, BC MEDIA TECHNOLOGY SERVICES

## WAR STORIES

Carmen M. Ortiz talks about the challenges of prosecuting high-profile cases in her former role as U.S. attorney. The Sept. 12 program was presented by the Rappaport Center for Law and Public Policy at Boston College Law School. Currently a visiting professor at the school, Ortiz stepped down as U.S. attorney in January. During her seven-year tenure, the office prosecuted Marathon bomber Dzhokhar Tsarnaev and Boston mobster James 'Whitey' Bulger, among others.

the activities of "sport, fair, exposition, play, entertainment or public diversion" may be conducted on any legal holiday. Section 14, unlike §13, does not require premium pay for employees working on any legal holiday.

"Because §13 and §14 were enacted together in St. 1962, c. 616, §2, I conclude that the Legislature intended that 'retail establishments' and businesses providing 'entertainment or public diversion' should be treated differently when it comes to the obligation to provide premium pay for work on the Holidays," the judge wrote.

The inclusion of movie theaters in §14 "by virtue of being a business providing 'entertainment or public diversion' is a more specific reference to the business of movie theaters than the generic 'retail establishment,'" Leibensperger stated.

"That means that movie theaters are governed by §14, not §13," he added, concluding that because §14 does not require premium pay for work on the holidays, the plaintiffs' "Count III must be dismissed in its entirety."

The three-page decision is *Smith-Berry, et al. v. National Amusements, Inc., et al.*, Lawyers Weekly No. 09-017-17.

The full text of the ruling and I Weekly's opinion digest of the case can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

— THOMAS

## Input sought on jury instructions

The Supreme Judicial Court el Homicide Instruction Committee is accepting comments on proposals to the Model Jury Instructions on Homicide.

The revisions are being made of the SJC's Sept. 20 decision in *monwealth v. Brown*, 477 Mass 80. The notice and proposed revisions can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

Comments should be emailed [lyn.patsos@jud.state.ma.us](mailto:lyn.patsos@jud.state.ma.us) and by Oct. 27.

## SJC puts out call for amicus briefs

The Supreme Judicial Court is amicus briefs in the following cases: • SJC-12395, *In re a Juvenile*