

APPEALS COURT RULE 32.0,
ACCESS TO ELECTRONIC CASE INFORMATION AND COURT RECORDS

This rule governs the information made available to the public on the Appeals Court's website ("website").

(a) Scope. This rule applies to case dockets of the Appeals Court panel and single justice sessions.

(b) Definitions.

(1) Public case. A case is designated as "public" when all of the data and documents in that case are available to the public.

(2) Partially impounded case. A case is designated as "partially impounded" when some data or documents in that case are available to the public but other data or documents are confidential and not available to the public.

(3) Impounded case. A case is designated as "impounded" when no data or documents in that case are confidential and not available to the public.

(c) Case docket and calendar information. Case information will be posted to the website within 24 hours after the Clerk adds it to the docket or the case management system generates it.

(1) Public cases. Unless otherwise ordered, the following case information from public cases is remotely accessible on the website: Appeals Court docket number; entry date; name of each party; the name, address, and telephone number of an attorney representing a party or the name of any self-represented party; case status; case type; case nature and sub-nature; the name of the lower court, the lower court docket number, and the names any judge(s) whose order(s) are at issue in the appeal; the names of any single justice or panel of justices assigned to the case; brief status; decision date; citation; and a list of all docket entries.

(2) Partially impounded cases. In partially impounded cases, unless otherwise ordered, the same items identified in paragraph (c)(1) for public cases is remotely accessible on the website, except that any impounded data is not posted to the website, and a pseudonym is used for the name of any party whose identity is restricted.

- (3) Impounded cases. Remotely accessible case information in impounded cases is limited to the Appeals Court docket number; a pseudonym for the name of each party; the name, address, and telephone number of an attorney representing a party or the pseudonym of any self-represented party; entry date; case status; status date; the name of the lower court and of any judge(s) whose order(s) are at issue in the appeal; and the names of any single justice or panel of justices assigned to the case. The docket entries are not remotely accessible.
- (d) Briefs. Electronic copies of briefs filed in public cases scheduled for oral argument will be posted on the website on or before the first day of the month in which argument is to be held. Copies of all briefs posted on the website after January 1, 2016, will remain on the website thereafter unless otherwise ordered. All briefs and record appendices must be filed in conformance with the law and rules governing redaction and public access.
- (e) Oral Argument Recordings. The audio recordings of oral arguments in all panel cases will be posted on the website, ordinarily within 72 hours of completion of argument. Recordings of all arguments occurring after January 1, 2019, will remain on the website thereafter unless otherwise ordered.
- (f) Decisions. Opinions and decisions of the Appeals Court are available on the website of the Office of the Reporter of Decisions.
- (g) Additional Items in the Case Record. No filings or case records other than those identified in paragraphs (d) and (e) shall be posted on the website. At the direction of the Chief Justice of the Appeals Court, additional categories of filings or documents may be made available.
- (h) Exemption of Case Natures. The Chief Justice of the Appeals Court, after notification to the Supreme Judicial Court, may exempt certain case types, categories of information, or court records from remote access.
- (i) Use of Pseudonyms. The court's case dockets, decisions, and orders shall use a pseudonym for the name of any person whose name is required by law not to be disseminated publicly or when the court exercises its discretion to use a pseudonym for a party or person identified in a case.
- (j) No Creation of Rights. The Appeals Court maintains the electronic case information and court records described in paragraphs (c)-(e) on the website to facilitate access to case information and court records as a courtesy to the public.

This rule does not create a right of access to any case information or court record or a right to prohibit public access to any case information or court record. Case information and court records remain available for inspection or duplication at the discretion of the Appeals Court and consistent with applicable law.

(k) Prevention or Limitation on Remote Data Collection. The Appeals Court may implement a process or instrument for the purpose of preventing or limiting remote collection or extraction of bulk data.

(l) Terms and Conditions. The Chief Justice of the Appeals Court, after notification to the Supreme Judicial Court, may implement a user agreement with terms and conditions for use of its website.

Commentary

This rule is intended to identify, clarify, and govern the Appeals Court's practices of posting for public remote electronic access certain case information and electronic court records to the appellate courts' website.

In May, 2003, the Supreme Judicial Court adopted a "Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web" ("2003 Web Policy"). The 2003 Web Policy was "intended to govern public access to docket and calendar information that is or will be maintained in computerized case management systems." The 2003 Web Policy governed both the appellate courts and the Trial Court. The Supreme Judicial Court expected "that the policy will evolve over time to reflect technological developments as well as the experience of litigants, attorneys and court personnel" and would be "reexamined periodically to consider whether changes are appropriate in light of experience and advances in technology." As the 2003 Web Policy contemplated, both the appellate courts and the Trial Court have made substantial changes based both on advances in technology and on the experience of litigants, attorneys, and court personnel with remote access to electronic case information and court records.

The Trial Court adopted Uniform Trial Court Rule XIV, Public Access to Court Records ("Trial Court Rule XIV"), which was approved by the Supreme Judicial Court and became effective on November 1, 2016. Trial Court Rule XIV contains modern provisions governing remote access to electronic case information and court records in the Trial Court. Trial Court Rule XIV does not apply to the Appeals Court.

In approving Trial Court Rule XIV, the Supreme Judicial Court authorized the Trial Court to post public documents to the Trial Court website, at least for access through the Trial Court's "attorney portal," which provides greater remote access to electronic case information and court records to attorneys with an appearance in a specific case. Unlike the Trial Court's website, the appellate courts' website does not have a separate attorney portal; however, both the Supreme Judicial Court and Appeals Court have regularly posted briefs to the appellate courts' websites for the past several years.

In 2020, the Appeals Court proposed to adopt Rule 32.0 to govern remote access to electronic case information and court records in the Appeals Court and, with approval of the Supreme Judicial Court, intends for this Rule to supersede the 2003 Web Policy to the extent that the two authorities are not consistent.

Appeals Court information may be found on three different websites, only one of which is governed by this Rule. The three websites are: (1) the Massachusetts appellate courts case information website, available at <http://www.ma-appellatecourts.org/index.php>; (2) Massachusetts government website, available at <https://www.mass.gov/orgs/appeals-court>; and (3) the appellate opinion portal of the Office of the Reporter of Decisions of the Supreme Judicial Court, available at <https://www.mass.gov/appellate-opinion-portal>. This rule pertains only to the case docket and calendar information available at <http://www.ma-appellatecourts.org/index.php>. The URL links for websites may change over time and this rule will continue to govern the remote access to Appeals Court case records notwithstanding different URLs.

Paragraph (a) provides the general scope of the rule as including both types of dockets maintained by the Appeals Court: the panel ("P") docket and the single justice ("J") docket.

The appellate courts' website operates in conjunction with the appellate courts' internal case management system. Electronic case information that is subject to remote access is taken from the case management system and posted onto the website, after a period of time (in 2019, the website updates once per day at approximately 9:00 p.m.). This information is only made available after the Clerk's Office personnel enters it into the court's docket maintained in the court's case management system or the case management system generates the information. Depending on the type of case or point in time during a case, some

fields may not be filled and accordingly will be blank or not be remotely accessible on the website.

Paragraph (b) defines three case designations based on the degree that information from those cases are available to the public as a matter of law and policy, and paragraph (c) details the information that is made available for each case type.

(1) A case is designated as "public" when all or substantially all of the data and documents in that case are publicly available. A limited exception to this classification, for administrative purposes only, is in cases where the only impounded document in the case record is a party's affidavit of indigency. Such cases are designated as public cases although the docket indicates the affidavit of indigency is impounded and is not accessible to the public. It would generate undue public confusion about public access and electronic filing if all cases involving only an affidavit of indigency were categorized as partially impounded.

(2) A case is designated as "partially impounded" when some data or documents in that case are publicly available but other data or documents are confidential and not publicly accessible. This category of cases includes, and is not limited to, criminal cases involving a sexual assault where dissemination of the victim's name is statutorily restricted, domestic relations cases involving the parties' financial statements, and abuse or harassment protection order cases.

(3) A case is designated as "impounded" when no data or documents in that case are available to the public. These cases include, and are not limited to, child welfare appeals, certain juvenile criminal cases, and appeals arising from decisions of the Sex Offender Registry Board.

Paragraph (d) explains the posting of briefs to the website in public cases scheduled for oral argument. At the direction of the Chief Justice of the Appeals Court, the Clerk began posting briefs in public cases for cases that were argued before a panel of Justices after November, 2015. Briefs in cases that were argued before December, 2015, are not remotely accessible. Briefs in partially impounded and impounded cases are not currently posted to the website. Although briefs in partially impounded cases are not posted to the website, they may or may not be publicly accessible in the Clerk's Office for inspection or duplication, depending on whether the brief is impounded.

Paragraph (e) details the posting of oral argument recordings to the website. At the direction of the Chief Justice of the Appeals Court, the Clerk began posting oral argument recordings for cases argued before a panel of Justices after January 1, 2019. Recordings of oral arguments held prior to January, 2019, are not posted to the website. The oral argument recordings posted are ordinarily in all case types, including impounded cases. In light of the increased availability of oral argument recordings, litigants and their counsel should be vigilant in not disclosing impounded information during oral argument. See Mass. R.A.P. 16(d), 16(m), 18(d). Recordings of single justice hearings are not posted to the website. Many single justice hearings are required by statute, such as G.L. c. 261, § 27D, and G.L. c. 239, § 5. The Appeals Court deems these hearings exempt from remote access because they involve a substantial privacy matter of a party's indigency.

Paragraph (f) clarifies that the Appeals Court does not directly make appellate decisions remotely accessible to the public. Instead, decisions are made available by the Supreme Judicial Court on the website of Office of the Reporter of Decisions. Appeals Court decisions (published and unpublished) are also accessible in the Clerk's Office for inspection or duplication.

Paragraph (g) provides that only the case records identified in this rule may be posted on the court's website and that, at the direction of the Chief Justice of the Appeals Court, additional categories of filings or documents may be made remotely accessible. At this time, record appendix volumes, motions, and other filings or portions of the case record are not posted.

Paragraph (h) explains that certain case types, categories of information, or court records may be designated as exempt from remote access. This paragraph is modeled after Uniform Trial Court Rule XIV, Public Access to Court Records, Rule 5 (a)(1)(iii). In addition, since 2017, it has been the practice of the Appeals Court not to post to the website the names of the parties in appeals in G. L. c. 209A (abuse prevention order) or G. L. c. 258E (harassment prevention order) cases, or other matters involving an abuse prevention order or injunction, consistent with the Federal Violence Against Women Act, 18 U.S.C. § 2265(d)(3). Although such names are not impounded in the case record or briefs, the court will not make the names remotely accessible. Paragraph (h) recognizes this practice and provides authorization for further exemption of case natures as determined by the Chief Justice of the Appeals Court.

Paragraph (i) states the Appeals Court's practice of using pseudonyms in lieu of the identity of a person whose name is impounded or where the court exercises its discretion to use a pseudonym (e.g., minor child's name in a domestic relations case).

Paragraph (j) is modeled after Uniform Trial Court Rule XIV, Public Access to Court Records, Rule 5(e), and the 2003 Web Policy and also incorporates existing language from prior announcements by the Appeals Court concerning its providing remote access to electronic case information. As the Supreme Judicial Court noted in 2003, "the law does not require courts to provide electronic access to court case information and this policy does not create any right to such access." Similarly, the Commentary to Uniform Trial Court Rule XIV, Public Access to Court Records, Rule 5(e), explains:

The public has a qualified common law right to access court records in a courthouse. Although there is no constitutional or common law right to remote access of the same court records, the Trial Court recognizes that advances in technology provide the public and the court with additional means of access that benefit both the public and the court. This rule acknowledges the desirability of providing remote access to court information, and balances that access with the limits imposed by law and privacy concerns. Rule 5 does not provide the public a right of access to any court record prohibited from public disclosure . . . , nor to the provision of remote access to all content of publicly available court records. The right of the public to access to court records at a Clerk's office pursuant to Rule 2 shall not be limited because of concurrent remote access.

Consistent with the 2003 Web Policy and Uniform Trial Court Rule, the Appeals Court recognizes that remote access to certain classes of electronic case information does benefit both the public and the court. This paragraph expressly rejects the notion that adopting a rule outlining the Appeals Court's practices creates a right to access to any case information or court record or a right to prohibit public access to any case information or court record.

Paragraph (k) is intended to authorize, should the Chief Justice of the Appeals Court, with the permission of the Supreme Judicial Court, determine it necessary, the installation of a CAPTCHA program on the appellate courts' website to prevent or limit the remote collection of data, including PDFs of case records or

recordings of oral argument. A CAPTCHA is a "Completely Automated Test to Tell Computers and Humans Apart" and is designed to prevent the collection of bulk data. CAPTCHA may be used to prevent wholesale downloading of court records. Uniform Trial Court Rule XIV, Rule 4, prohibits requests for bulk distribution of court record information, except in limited circumstances. The notes to that rule explain:

An attempt to duplicate in whole or substantial part any of the case management databases would be burdensome to court personnel and could cause unwarranted harm to litigants, victims, witnesses, and jurors.

Accordingly, paragraph (k) authorizes the installation of a CAPTCHA on the appellate courts' website to protect the Appeals Court's electronic case information and court records from bulk collection if the Appeals Court deems such necessary.

Paragraph (l) authorizes the Chief Justice of the Appeals Court, after notification to the Supreme Judicial Court, to implement a user agreement with terms and conditions for use of its website. The Supreme Judicial Court has approved the Trial Court's use of terms and conditions for its attorney portal. See Uniform Trial Court Rule XIV, Public Access to Court Records, Rule 5(a) & 5(b).