



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued November 2, 2020

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## Appeals Court

For the period September 1, 2018 through October 31, 2019





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

November 2, 2020

Chief Justice Mark V. Green  
Appeals Court  
John Adams Courthouse  
One Pemberton Square, Room 1200  
Boston, MA 02108

Dear Chief Justice Green:

I am pleased to provide this performance audit of the Appeals Court. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, September 1, 2018 through October 31, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Appeals Court for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue horizontal line.

Suzanne M. Bump  
Auditor of the Commonwealth

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## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>OVERVIEW OF AUDITED ENTITY .....</b>	<b>2</b>
<b>AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY.....</b>	<b>3</b>
<b>DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE .....</b>	<b>6</b>
<b>1. The Appeals Court did not collect and verify documentation to support its daily deposits. ....</b>	<b>6</b>

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Appeals Court for the period September 1, 2018 through October 31, 2019. In this performance audit, we examined the Appeals Court’s compliance with Section 4 of Chapter 262 of the General Laws and Rules 8a–8f of the *Massachusetts Rules of Electronic Filing*, as well as the efficiency of the electronic document filing system eFileMA. We also assessed the court’s fee collection.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">6</a></b>	The Appeals Court did not collect and verify documentation to support its daily deposits.
<b>Recommendations</b> <b>Page <a href="#">7</a></b>	<ol style="list-style-type: none"><li>1. The Clerk’s Office and the Fiscal Office should develop a process to ensure that all supporting documentation is retained for reconciliation and that any discrepancies between the log sheets and the Fees Paid—Detail Report are formally documented.</li><li>2. The Fiscal Office should confirm that all cases from the previous day have been processed before generating the Fees Paid—Detail Report.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

The Massachusetts Appeals Court was established in 1972. According to its website,

*The Massachusetts Appeals Court is committed to doing justice under the law by rendering thoughtful, well-reasoned appellate decisions in a timely and efficient manner, treating all those who come before the court fairly and impartially.*

The Appeals Court is a court of general appellate jurisdiction, where justices review decisions that trial judges from the departments of the Trial Court have already made. It also has jurisdiction over appeals of final decisions made by three state agencies: the Appellate Tax Board, the Industrial Accident Board, and the Commonwealth Employment Relations Board. The Appeals Court has a chief justice and 24 associate justices and is located at the John Adams Courthouse at One Pemberton Square in Boston. In fiscal years 2019 and 2020, the Appeals Court received appropriations of \$13,627,421 and \$13,615,014, respectively. The Appeals Court administered and processed 2,088 cases during our audit period.

The Appeals Court contracted with Tyler Technologies in 2014 to create an electronic system to enable filing to be performed through a secure method. According to the Massachusetts court system's website, the filing system, eFileMA, "allows filers to **easily open court cases and e-file documents to participating courts** anytime and from anywhere—24 hours a day, seven days a week, 365 days a year."

The Supreme Judicial Court has published the *Massachusetts Rules of Electronic Filing*, effective September 1, 2018, which govern the Appeals Court's e-filing process. When a document is e-filed, the Appeals Court Clerk's Office reviews the filing for compliance with these rules and collects the required filing fee.

According to the Appeals Court website,

*[The Appeals Court charges fees] for filing civil and criminal appeals, single justice motions, copies, electronic court documents, and [compact discs] of oral argument. . . . The Appeals Court will accept cash, check, money order, or credit card payments.*

The court has created a process to document each day's fees collected on log sheets that are contained in a fiscal ledger and are used and maintained by the Clerk's Office. Each day, the Appeals Court's Fiscal Office uses a log sheet, in conjunction with supporting documentation (including reports from Forecourt Paragon Case Management System, which the Appeals Court uses for case management and docketing), to reconcile the previous day's revenue collections.

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Appeals Court for the period September 1, 2018 through October 31, 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does the Appeals Court comply with Section 4 of Chapter 262 of the General Laws and Rules 8a–8f of the <i>Massachusetts Rules of Electronic Filing</i> to waive court fees?	Yes
2. Does eFileMA reduce the amount of time it takes for the Appeals Court Clerk’s Office to process cases?	Yes
3. Does the Appeals Court ensure that fees are assessed in accordance with Section 4 of Chapter 262 of the General Laws and are verified through reconciliation and collection, in accordance with the Comptroller of the Commonwealth’s guidance on cash recognition and reconciliation?	No; see Finding <u>1</u>

We gained an understanding of the internal control environment and the design of controls related to our audit objectives by reviewing applicable Appeals Court policies and procedures, as well as making inquiries and observations. In addition, we performed the following procedures to obtain sufficient, appropriate evidence to address our audit objectives.

### Waived Court Fees

For waived court fees, we extracted a data set of all case-related transactions from eFileMA for our audit period and filtered the data to include only waived cases. Using Audit Command Language (ACL), we selected a statistical random sample of 60 out of 9,867 waived cases. For each case, we obtained

evidence, including forms and notices, and verified the Appeals Court's compliance with the *Massachusetts Rules of Electronic Filing* for motions to waive. Specifically, we determined whether a motion to waive fees<sup>1</sup> was filed, whether an affidavit of indigency<sup>2</sup> / inmate affidavit<sup>3</sup> and supplement to such affidavits<sup>4</sup> was completed, and whether a notice of docket entry<sup>5</sup> was filed and completed.

## Case Processing Time

The Appeals Court processes motions and briefs filed for cases through a review of documents to confirm that they comply with the *Massachusetts Rules of Appellate Procedure*. For case processing time, we conducted analytical procedures and a test.

For the analysis, we obtained a Docket Entries Report, which showed all 12,233 motions and 7,411 briefs filed during our audit period, from Forecourt Paragon Case Management System at the Appeals Court. We confirmed with the Appeals Court the average time it took to process motions and briefs filed both through eFileMA and on paper. We calculated the total number of hours it took to process all paper briefs and motions and the number of hours it took to process all electronic briefs and motions. Then we determined the number of hours it would have taken if all paper briefs and motions had been filed electronically. Finally, we calculated the total number of hours that would have been saved if all paper briefs and motions had been filed electronically. We determined that the Appeals Court would have reduced the processing time by 313 hours if all paper briefs and motions tested during the audit had been filed electronically.

For the test, we obtained a data set of all cases entered in Forecourt at the Appeals Court during our audit period. We filtered the data to count the cases initially entered through eFileMA and those initially entered on paper. We selected a nonstatistical random sample of 60 cases out of a total population of 2,088 (533 eFileMA cases and 1,555 paper cases) using ACL. The sample consisted of 15 eFileMA cases and 45 paper cases. We obtained evidence (in the form of screenshots) of the docket sheet, which includes specific case activity information from Forecourt. For each case, we verified the total numbers of motions and briefs filed through eFileMA and on paper during the audit period and determined

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1. Motion to waive occurs when a filer completes all forms to prove that the filer is indigent and submits the documentation to the court for review and decision on status of indigency.
  2. An affidavit of indigency is a form used to determine whether a person is eligible to have court fees and costs waived.
  3. An inmate affidavit is a form used for the same purpose as an affidavit of indigency, used when the filer is in jail and cannot pay the fees assessed.
  4. The supplement is a report from a jail showing an inmate's accounts with that institution, proving that the inmate does not have the means to pay a fee.
  5. A notice of docket entry is sent to a filer after the Appeals Court Clerk's Office has reviewed and approved filed documents.

whether filing all motions and briefs through eFileMA would have reduced the amount of time it took for the Appeals Court to process cases. We determined that if all briefs and motions tested during our audit had used eFileMA, the processing time would have been reduced by 22%.

## **Fee Collection**

For fee collection, we compiled a list of working days when the Appeals Court made deposits during the audit period. Using ACL, we selected a nonstatistical random sample of 45 out of 293 days when deposits occurred. We obtained reconciliation evidence, including bank receipts, copies of checks, reports from Forecourt, and credit card reports. For each deposit day, we verified the Appeals Court's compliance with Section 4 of Chapter 262 of the General Laws and the Appeals Court's fee schedule by confirming that assessed fees for filing and miscellaneous charges were accurate. In addition, we verified the accuracy of the Appeals Court's reconciliation of daily revenue collections by reviewing log sheets and the reconciliation evidence for fees assessed.

## **Data Reliability Assessment**

We reviewed certain general information controls and access controls over Forecourt and eFileMA, including security training and personnel screening for the Appeals Court. In addition, for cases from Forecourt, we performed data integrity tests to identify any blank fields and duplicate records for our audit period. For data obtained from eFileMA, we performed data integrity tests to identify any blank fields and dates outside our audit period. We tested the accuracy of Forecourt and eFileMA data by tracing electronic data to source documentation, such as documentation of the assembly of the record<sup>6</sup> for each case. We could not test the completeness of information from Forecourt and eFileMA because no hardcopy files were available. We determined that the data from both systems were sufficiently reliable for our audit purposes.

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6. The assembly of the record is the compilation, organization, and retention of case information by the clerk of the lower court until the final disposition of the appeal. This case information is then transmitted to the Appeals Court by a court order.



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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Appeals Court did not collect and verify documentation to support its daily deposits.

The Appeals Court did not obtain documentation to support fees collected or verify that documentation was present during its fee reconciliations. Without collecting and verifying all supporting documentation, the Appeals Court cannot reliably conclude that all revenue has been obtained, recorded, and deposited.

The Appeals Court Clerk's Office does not obtain supporting documentation, such as receipts, for certain fees that are collected and recorded on the log sheet and classified as "miscellaneous fees."<sup>7</sup> Instead, each day, the Clerk's Office at the Appeals Court manually transcribes and totals the funds collected onto a log sheet but does not create any other documentation to support the fees on the log sheet and assist with the reconciliation.

In addition, when completing its reconciliation between the log sheet and Forecourt Paragon Case Management System the following day, the Appeals Court Fiscal Office does not obtain all supporting documentation for certain cases where fees have been waived. For cases with a "motion to waive" or "no fee" status,<sup>8</sup> for which no fee is collected, the Clerk's Office enters that status in Forecourt. When performing its reconciliation, the Fiscal Office obtains the log sheet and any supporting documentation (such as a Forecourt-generated report of case information called the Fees Paid—Detail Report) from the Clerk's Office, but this documentation is not always complete. We found some discrepancies between the log sheets and the supporting documentation, and our testing showed that 31 out of 49 miscellaneous fees, from 31 of the 45 deposit days tested, did not have support to determine whether the reconciliation was accurate. For 23 out of 273 cases whose status was "no fee" or "waived fee," there was a discrepancy between the log sheets and the supporting documentation.

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7. Section 4(b) of Chapter 262 of the Massachusetts General Laws allows the Appeals Court to assess miscellaneous fees for the following: photocopies (per page), certified/attested copies (per page), computer printouts (per page), electronic document printouts (per page), mailing of compact discs of electronic documents, and mailing of compact discs of oral arguments.

8. Cases with motion to waive are cases where a party has filed as indigent. Cases with no fee are cases that are criminal.

## Authoritative Guidance

According to the Comptroller of the Commonwealth’s “Cash Recognition and Reconciliation” policy, for each transaction,

*Daily system assurance must be performed by departments to ensure that there is a matching deposit. . . . This process involves comparing the results from all sources that produce or contain payments and deposit information, and ensuring that they match.*

## Reasons for Issue

With regard to receipts for miscellaneous fees, officials at the Appeals Court told us they felt that the log sheet itself constituted adequate supporting documentation.

The discrepancies between the log sheets and supporting documentation occur because eFileMA allows users to file 24 hours a day, seven days a week, but the Clerk’s Office has specific office hours when it processes the documents filed. If a user files outside these office hours, the Clerk’s Office may not have had the opportunity to process all the documents filed by the time the Fiscal Office reviews the Fees Paid—Detail Report, and the documents may not be included in that report. When discrepancies do occur, the Clerk’s Office and the Fiscal Office do not have a formal process to communicate them in writing.

## Recommendations

1. The Clerk’s Office and the Fiscal Office should develop a process to ensure that all supporting documentation is retained for reconciliation and that any discrepancies between the log sheets and the Fees Paid—Detail Report are formally documented.
2. The Fiscal Office should confirm that all cases from the previous day have been processed before generating the Fees Paid—Detail Report.

## Auditee’s Response

1. *Working with the audit team, the Clerk’s Office and Fiscal Office have developed and implemented a process to ensure that all supporting documentation is retained for reconciliation, and that any discrepancies between the log sheets and the Fees Paid—Detail Report are formally documented.*
2. *The Clerk’s Office has implemented a temporary process, using an email folder, to reconcile and document all transactions from the previous day, including in particular those transactions generated by the eFileMA electronic filing systems after the close of regular business hours the previous day, and the Clerk’s Office and Fiscal Office are working to develop a more formal permanent process to accomplish that objective.*

### **Auditor's Reply**

Based on the above response, the Appeals Court is taking measures to address our concerns about the reconciliation process for assessed fees.