

District Court Third Amended Standing Order 10-20
Court Operations for the Adjudication of Summary Process Cases

This Standing Order shall repeal and replace District Court Second Amended Standing Order 10-20. To temporarily continue the modifications to summary process proceedings put in place during the COVID-19 State of Emergency, I hereby ORDER, pursuant to my authority as set forth in G.L. c. 211B, § 10, G.L. c. 218, §§ 38 & 43A, and G.L. c. 220, § 5 that all Summary Process cases filed pursuant to G.L. c. 239, shall be addressed in the following manner:

I. Management of Summary Process Cases

1. Consistent with Joint Standing Order 1-21 of the Boston Municipal Court Department and District Court Department or any amended version thereof (Joint Standing Order 1-21) summary process matters shall proceed as follows:

- a. summary process hearings, apart from trials, shall be presumptively virtual unless a party requests, and the court orders, that the hearing be conducted in-person; and
- b. all summary process trials shall be in-person unless a motion for virtual appearance pursuant to Section VII of Joint Standing Order 1-21 has been allowed.

In cases with one or more self-represented litigants (SRLs) where a court is scheduling a videoconference, the District Court recognizes the possibility that SRLs may have limited access to the technology needed to conduct videoconferences or limited experience with it, and will either assist the SRL in being able to conduct a videoconference or offer an alternative to videoconferencing for the hearing.

2. Summary process complaints shall be filed in-hand or by first-class mail to the clerk's office, or, if provided by the court, by utilizing the drop-box provided at the appropriate courthouse. On and after January 25, 2021, and so long as St. 2020, c. 257, as amended by St. 2021, c. 20 (Chapter 257) remains in effect, the plaintiff must file in all residential nonpayment cases, together with the summons and complaint, the Trial Court-promulgated "Affidavit of Compliance with Section 1(a) of St. 2020, c. 257, as amended by St. 2021, c. 20" ("Affidavit of compliance with Chapter 257") indicating whether plaintiff has delivered to the defendant the required form pursuant to Chapter 257, as amended by St. 2021, c. 20. The court's affidavit is available on the court's website.

As of January 25, 2021, and so long as Chapter 257 remains in effect, a clerk shall not accept for filing a summary process case that fails to include the Affidavit of Compliance with Chapter 257.

II. Scheduling and Deadlines in Summary Process Cases

1. Plaintiffs shall not provide a trial date on the summary process summons and complaint but rather should indicate on the summons and complaint that the trial date is "to be determined by the court" or "TBD by the court." The Trial Court's promulgated summons and complaint form notifies the parties that the court will notify them of the date, time, and manner of the court event. The form may be found on the court's website.

2. In all summary process cases the court will notify the parties of the date and time of the first court event, which shall be a judicial case management conference. The case management conference will allow the court to explore the parties' interest in mediation, discuss the availability of assistance with housing costs, and, while it remains effective, the requirements of the order issued by the Centers for Disease Control and Prevention, effective September 4, 2020, or any extension thereof ("CDC Order"), temporarily halting residential evictions to prevent the further spread of COVID-19. The conference will also provide an opportunity to establish stipulations, narrow the factual and legal issues to be addressed at trial, order continuances, establish discovery deadlines tailored to the specific case, and schedule urgent or dispositive motions, including motions to continue the case under § 2(b) of Chapter 257 while said section remains in effect. If a defendant moves for a continuance under § 2(b) of Chapter 257, so long as said section remains in effect, such continuance shall be granted consistent with the requirements of said section for a period as the court may deem just and reasonable.

3. The answer to a summary process complaint shall be due no later than three business days prior to the date of the case management conference, unless otherwise ordered by the court.

4. If any case is referred to mediation, the case may be continued for a further case management conference. The court may also, at the request of the parties or at its discretion, continue any case for any reason if doing so will assist the parties with resolving the dispute. So long as Chapter 257, § 2(b) remains in effect, the court shall continue the case if the defendant moves under said section to continue the case and the court determines that the defendant satisfies the enumerated criteria in said section § 2(b) of Chapter 257. If the case has not been continued, is not referred to mediation, or an agreement is not reached, the case will be continued for a bench trial date no sooner than two weeks after the case management conference.

5. Failure to appear at the case management conference may result in entry of a default or dismissal of the case. Instead, the case will be scheduled for a trial no sooner than two weeks following the date of the case management conference. If a party wishes to serve a discovery demand on the opposing party but has failed to appear at the case management conference, the party must, by motion, obtain approval of the Court to serve such demand. If a defendant requests a continuance under § 2(b) of Chapter 257, such continuance shall be granted so long as said section remains in effect consistent with the requirements of said section for a period as the court may deem just and reasonable.

6. Pursuant to § 2(b) of Chapter 257, so long as said section remains in effect, the court shall not enter judgment in a residential nonpayment of rent case before an application for short-term emergency rental assistance has been approved or denied.

7. Any request for a transfer of the action under Uniform Summary Process Rule 4 shall be filed in both courts no later than the day before the commencement of the trial.

III. Executions

Until the expiration of the CDC Order, any application for an execution in any residential summary process action that includes a claim for nonpayment of rent, shall be accompanied by an affidavit (CDC Affidavit) indicating whether the plaintiff has received a Declaration from the tenant pursuant to the CDC Order.

Subject to the requirements of the CDC Order, and so long as it remains in effect, if any court COVID-19 Standing Order tolled the issuance of an execution on a judgment of possession, and the statutory 90-day expiration date on the execution has passed, a landlord may file a written request or motion for a new execution. Until the expiration of the CDC Order, in all residential evictions for nonpayment of rent cases, such written request must include the Trial Court-promulgated “First Amended Plaintiff’s Affidavit Concerning CDC Order,” averring that the landlord has or has not received a declaration from the tenant under the CDC Order. The affidavit is available on the court’s website. Where the CDC Order does not prevent the issuance of an execution on a judgment for possession, the Clerk’s office will issue an execution upon such request for a 90-day period. However, if a landlord seeks an execution for a different amount of money damages, he or she shall file and serve a motion to amend the underlying judgment and the motion, together with any opposition, will be heard virtually.

Pursuant to § 2(b) of Chapter 257, so long as said section remains in effect, a court shall stay an execution if the court determines that the enumerated criteria in the statute are met.

IV. Motions for Removal of Defaults or Vacating Dismissals

Where a summary process case has been dismissed or default has entered on or after March 10, 2020, a party may move to vacate the dismissal or default and such motion shall be allowed by the court unless an objection is filed by the opposing party. Pursuant to II(5), above, no default or dismissal shall enter as a result of the failure to appear at a case management conference.

V. Scope of this Order

This Order will remain in effect until a subsequent order issues rescinding this Order. Any other deviation from this Order must be sought from the Chief Justice of the District Court.

This Order shall take effect on August 16, 2021.

/s/ Paul C. Dawley

Hon. Paul C. Dawley
Chief Justice of the District Court
Promulgated: August 13, 2021