

**MASSACHUSETTS APPEALS COURT  
OPERATIONS MANUAL  
12/01/2023**



**PUBLIC FACING DOCUMENT**

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## **Introduction**

The Appeals Court has prepared this document in an effort to provide greater transparency regarding its procedures, protocols, and operations. This version of the court's internal operations manual contains the practices and protocols of how the court operates on topics ranging from building access to circulating a draft decision for review. It does not contain all of the court's internal operating procedures. The court reserves the right to amend these policies from time to time. These materials are not intended to serve or be used as a set of rules, but instead to illustrate the Appeals Court's inner processes.

## **I. General**

### **A. Building Access and Hours**

Exterior Entrances to Building. There is one entrance to the courthouse located on the courtyard at Pemberton Square. The Pemberton Square entrance has staffed security and is accessible to the public from 8:30 a.m. until 4:30 p.m. The entrance on the Somerset Street side of the building is an employee only entrance.

### **B. Building Closures**

If a decision is made to close the John Adams Courthouse building (the Appeals Court does not control this decision), the Court Administrator, after consulting with the Chief Justice (or the Chief Justice's designee), will coordinate the closure by contacting the Operations Manager, the Assistant Chief Information Officer, the designated webmaster at the Trial Court, the Clerk, and the Chief Court Officer.

- i. The Clerk or their designee will post a notice of closure on the oral argument inclement weather line.
- ii. The Project Coordinator maintains the court's public listserv and may send notice of closure to subscribers and post on Twitter.
- iii. The Trial Court Webmaster will post a notice of closure on the court's website on mass.gov.

### **C. External Websites & Social Media Platforms**

The Appeals Court utilizes the following websites and social media to disseminate

public information, including <https://www.mass.gov/orgs/appeals-court> for general court and procedural information:

- i. <https://www.ma-appellatecourts.org/> provides access to individual case dockets and oral argument calendars. All docket entries are available in cases designated as "public" and "partially impounded." Limited information is available for "impounded" cases. Audio recordings of oral argument hearings are posted in each case. Briefs in public cases scheduled for oral argument are posted approximately one month before the argument.
- ii. A LinkedIn Account at <https://www.linkedin.com/company/massachusetts-appeals-court>.
- iii. An account with X (formerly known as Twitter) at [@massappct](https://twitter.com/massappct).
- iv. An email listserv to provide updates about general news affecting the Appeals Court. Court personnel and the public may enroll by sending an email to [MassAppealsCourt-Join@jud.state.ma.us](mailto:MassAppealsCourt-Join@jud.state.ma.us).
- v. [The Review](#), a quarterly publication about pertinent Appeals Court events and information. Persons who subscribe to the court listserv are added as subscribers of The Review.
- vi. A [YouTube channel](#), where the Appeals Court livestreams and archives many of its oral arguments and posts other content.

## **II. Organizational Structure of the Appeals Court**

### **A. Judges**

There are twenty-four associate justices of the court, and one chief justice.

### **B. Departments**

The court has the following departments and organizational groups:

- Administrative Office, which includes fiscal, budget, payroll, and human resources functions, and which is under the supervision of the Court Administrator.

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- Clerk's Office, which administers filings, hearings, and case records of the single justice and panel sessions, and which is under the supervision of the Clerk.
- Court Officers, who maintain court security, and are under the supervision of the Chief Court Officer.
- Law Clerks, who provide research and writing support to judges, and are under the supervision of the Administrative Attorney/Law Clerk Manager.
- Secretarial, who support the judges, and are under the supervision of the Operations Manager.
- Staff Attorneys, who provide screening, writing, and editorial assistance to the judges, and are under the supervision of the Chief Staff Attorney.

### C. Committees & Leadership Roles

- Standing Committees. The court has a number of standing committees and leadership roles with representation from the justices and staff. The Chief Justice or their designee determines who serves on the standing committees and the length of their service.
- Ad Hoc Committees. From time to time, the Chief Justice may determine that there is a need to form an ad hoc committee, and the Chief Justice will determine who is to serve on that committee and the length of their service.
- External Committees. Judges and court personnel serve on various standing and ad hoc committees established by the Supreme Judicial Court or Trial Court.

## III. Speaking Publicly

The Supreme Judicial Court's Public Information Office speaks on behalf of the Appeals Court. Judges and court personnel are encouraged to speak at legal educational programs.

## IV. Use of Court Resources

### A. General Policy

Court resources should be used for court purposes only. "Resources" include personnel, physical plant, parking, offices, fixtures, furniture, computers, photocopiers, and supplies (including postage). The court's resources, even if issued to judges or staff individually, do not belong to them, but remain the property of the court.

### B. Use of Computers

- i. General. The Appeals Court has a comprehensive computer policy derived from several sources. Taken as a whole, these documents detail the issuance, use and security of personal computers, laptops and iPads issued by the court and personal devices used for court purposes. The policies may be updated or revised by the court at any time and notice will be distributed to users and stored in the document management system (DMS).
- ii. Duty to know computer policies. All court personnel are responsible for familiarizing themselves with -- and following -- the policies identified in the previous paragraph.

### C. Use of Court Officers

- i. General. Court officers are to be used only to assist in the business of the court; court officers are not to assist with non-court matters.
- ii. Transporting Materials. Court officers may assist the court with transporting materials to and from the courtroom (whether at the John Adams Courthouse or off-site) or into the courthouse.

### D. Use of Secretaries

- i. General. Secretaries are to assist judges and others in the business of the court; they are not to assist with non-court matters.
- ii. Assignment. The Operations Manager, in consultation with the Chief Justice, shall assign a secretary to each judge, who will share the secretary with other judges.

**E. Use of Staff Attorneys**

- i. General. Staff attorneys are to be used only to assist in the business of the court; staff attorneys are not to assist with non-court matters.
- ii. Requests for Assistance - Consult. Judges, law clerks, or other staff members may contact staff attorneys directly for consults in that staff attorney's areas of specialty.
- iii. Requests for Assistance - Writing. A judge's request for assistance with a draft must be made through the Chief Staff Attorney. Upon receipt of the request, the Chief Staff Attorney selects a staff attorney for the assignment after considering the nature of the case, the subject matter, the length or difficulty of the assignment, and the staff attorney's experience, workload, and availability.
- iv. Writing. After assignment, the writing staff attorney consults directly with the judge assigned to author the opinion. Collaboration thereafter is dependent on the case and the individual judge's preference. Staff attorneys also consult with the Chief Staff Attorney as needed.

**F. Use of Law Clerks**

- i. General. Law clerks are to assist in the business of the court; they are not to assist with non-court matters. Although law clerks are assigned to work with a particular judge, they are employees of the court, and the terms of their employment are governed by the court. There may be occasions, including once individual judges have completed their writing assignments for the term, when law clerks will be asked to perform other work related to Appeals Court business.
- ii. Number. The Appeals Court hires 27 law clerks every year. Each Associate Justice has one law clerk, the Chief Justice has two, and the Clerk has one.

**G. Use of Interns**

- i. General. Interns are to assist in the business of the court; they are not to assist with non-court matters.

## V. Court Term and Calendar

### A. Location of Sittings

- i. Location. The court customarily conducts its sittings in the Armstrong Courtroom and the Hale Courtroom at the John Adams Courthouse. On occasion, at the discretion of the Chief Justice or the Chief Justice's designee, the court may conduct sittings elsewhere, usually in connection with the court's educational and community outreach efforts. In certain situations, including on motion or at the court's direction, oral argument may be conducted remotely by a videoconference program (Zoom).

### B. Scheduling and Availability of Judges

- i. Term. The court ordinarily hears arguments from September through June; however, arguments may also be heard in July and/or August.
- ii. Single Justice. A Single Justice may schedule a motion or petition for hearing at any time.
- iii. Judge availability and assignment. All judges should be available to sit the first fourteen business days of each month during the term, barring unforeseen circumstances. The Clerk's Office solicits judges for their availability to sit on panels two months ahead of the sitting month.

In normal circumstances, all judges are expected to sit during every month of the term, except when a judge is acting as the Single Justice for that month or is excused by the Chief Justice or the Chief Justice's designee.

If a judge acts as Single Justice or sits for oral arguments during July or August, the Chief Justice or the Chief Justice's designee will customarily excuse the judge from sitting for one month during the following term, consistent with the needs of the court.

### C. Public Court Calendar

- i. The court provides a detailed calendar on the public website (which can be found [here](#)). The website lists the dates that the court will hear oral arguments, the cases scheduled for argument, the judges on the panel, and the location of the argument. The calendar allows the public to click on events to

view more case detailed information. The Clerk's Office maintains the online calendar and adds new events as appropriate.

## **VI. Judges**

### **A. Seniority**

Judges' seniority is determined by the date (and, if applicable, the time) on which they were sworn into the Appeals Court -- not by the date of their nomination or confirmation. The court considers the judges' seniority for various matters, including when composing panel assignments and single justice rotations.

### **B. Conflicts/Recusal**

Each judge must provide the Court Administrator a list of judges, attorneys, and matters from which the judge will recuse themselves. At the beginning of each term, the Court Administrator will email each judge the judge's recusal list and ask for any changes. Each judge should respond promptly to that request to ensure that the list is up to date.

On a monthly basis, as quickly as possible after the cases have been assigned to the panels, each judge should check for conflicts. If a judge needs to recuse themselves, the judge must immediately inform the panel chief and their secretary as well as the Court Administrator and the Clerk's Office.

If the conflict comes to light with sufficient advance notice, the Clerk's Office may be able to swap the case with one assigned to a different panel, thereby avoiding the conflict, and obviating the need to change the panel composition (or enlist the Single Justice). If the conflict comes to light without sufficient time to swap a case, the Single Justice will sit in substitution for the recused panel member. If the Single Justice has a conflict or is otherwise recused, the next month's Single Justice will fill in. The judge must notify the panel chief and the Clerk's Office, which will update the docket.

### **C. Assignment of Judges to Panels**

Judges sit in panels of three, except for a new judge's ceremonial first case. The Chief Justice or the most senior judge is the panel chief. The next most senior judge sits to the panel chief's right; the junior judge sits to the panel chief's left.

The composition of the panels is random, with certain exceptions (for example, during

the first three months' sittings for a new judge, away sittings, and for expanded or special panels).

The panel assignments change every month. The exact dates of each sitting and the composition of the panels are determined by the Chief Justice or the Chief Justice's designee with assistance from designated members of the Clerk's Office. Panel composition is guided by G. L. c. 211A, § 3, which requires that, "insofar as practicable," each justice sit with every other justice "a substantially equal number of times."

#### **D. Distribution of Judicial Workload**

The workload of the court shall be distributed fairly among the judges. Typically, each panel will receive each month a mix of argument and non-argument cases, depending on the needs of the court.

#### **E. Assignment of Authorship**

The panel chief has the authority and responsibility to assign authorship, whether any of the cases present related questions, or other considerations that may affect the assignment of authorship.

Assignment should be done before argument but may occur later in exceptional circumstances.

The Appeals Court does not provide to the public the identity of the authoring judge for any case under advisement, nor the identity of the judge who authored a Rule 23.0 decision or a rescript opinion.

#### **F. Judicial Mentorship**

The Chief Justice, in consultation with the chair of the Judicial Mentoring & Orientation Committee, shall assign each incoming judge a judicial mentor.

The mentor shall sit with the new judge for three full months of oral arguments and will review the new judge's drafts, as needed, before they are circulated to the other members of the panel.

## **VII. Clerk's Office**

### **A. General**

- i. Contact Information. The Clerk's Office is located in Suite 1200 on the first floor. The mailing address is: Clerk's Office, John Adams Courthouse, Suite 1200, Boston, MA 02108. The telephone number is 617-921-4443.
- ii. Business Hours. The Clerk's Office is open to the public for in-person visits and telephone calls from 8:30 a.m. to 4:30 p.m. on all weekdays except legal holidays or when the court is closed due to inclement weather or other reasons. Office personnel are available to respond to inquiries from court staff and the public as to the operation and function of the court and relevant procedural rules.

### **B. Responsibilities**

The Clerk, Assistant Clerks, and office personnel (collectively referred to as "Clerk" or "Clerk's Office") maintain all case records and documents filed in the court, make available public documents on request, provide copies at any established fee rate, and protect impounded court records. The Clerk's Office is responsible for scheduling and recording the court's oral argument panel sessions and single justice hearings. All office personnel are available to assist the public with appellate procedural questions.

### **C. Personnel**

The Clerk's Office personnel are divided by job titles and duties, with some tasks overlapping. The primary groups are:

- i. Legal. By statute, the Appeals Court has a Clerk, First Assistant Clerk, and four Assistant Clerks. The Clerk and Assistant Clerks are lawyers and have a variety of responsibilities. Their primary duties include screening and acting on motions filed in panel cases, and screening and assisting the Single Justice with interlocutory petitions and motions filed in the Single Justice session. The Clerk and Assistant Clerks participate in court committees and projects, ranging from the amendment of procedural rules to the design and implementation of new technological processes. The legal group also includes Research Attorneys who assist the clerks and judges with legal research and analysis.

- ii. Oral Argument. Office personnel assist in sending and receiving notices of oral argument, preparing cases for distribution to the panels, responding to scheduling questions from court staff and the public, and operating the courtroom recording and livestream systems.
- iii. Docketing. Office personnel create new cases in the case management system (CMS), enter all filings, orders, and decisions onto the docket, and issue notices to the parties and the trial courts.
- iv. Records. Office personnel maintain case records and respond to internal and external requests for duplicates of case records.

#### **D. Access to Records**

Public Access to Records. Publicly available court records in the custody of the Clerk are available to any member of the public for inspection and/or copying during the regular business hours of the court. "Court record" means all or any portion of court papers, documents, exhibits, orders, recordings, dockets, and other records that are made, entered, filed, and/or maintained by the Clerk in connection with a case or proceeding. "Court record" includes an audio recording or official transcript of a proceeding, and any electronic duplicate or original court record. "Court record" does not include court papers, documents, exhibits, orders, dockets, and other records that are not filed with the court or otherwise created in connection with the case file. "Court record" does not include judicial work product related to the deliberative process, including confidential communications among judges and between judges and court staff made in the course of and related to their deliberative processes in particular cases.

Access to court records may be by courthouse access or remote access. Courthouse access includes requests to an employee of the Clerk's Office at the courthouse office counter and access through a computer kiosk. Remote access includes an internet-based portal for the public.

The Clerk and Assistant Clerks may set reasonable limits on the time, location, volume, and manner of access to protect the integrity of the court record and to prevent undue disruption to the operations of the Clerk's Office. Only Clerk's Office personnel may add, remove, and replace records in the court's files.

The Clerk's Office is responsible for providing access to all publicly available court records. An employee of the Clerk's Office will first determine whether a requested

court record, or any portion thereof, is publicly available or prohibited from public disclosure. The employee shall provide the record in the form requested by the public if practicable consistent with the court's fee schedule. The Clerk's Office responds promptly upon receipt of a request for access to a court record.

The Clerk's Office permits a member of the public to use a personal handheld electronic imaging device (e.g., personal scanner, or a camera on a cell phone) to make a copy of a court record, subject to reasonable limitations on the time, location, volume, and manner of access to protect the integrity of the court record and to prevent undue disruption to the operations of the Clerk's Office. A fee is not charged for such reproduction. The Clerk may allow a member of the public to use a sheet-fed or flatbed scanner or imaging device to make a copy of a court record, subject to space limitations and the limitations mentioned above. A fee is not charged for such reproduction.

Original papers may not be taken out of the Clerk's Office. Appeals Court personnel outside the Clerk's Office staff may sign out an original record, with its return noted, but cannot leave the courthouse with it. Documents in archived cases are stored electronically in PDF format and may be viewed by the public on the kiosk or emailed internally.

Original Exhibits. Upon motion or the initiative of a panel or Single Justice to view an original exhibit (e.g., drug paraphernalia, weapon) retained in the lower court, the panel or Single Justice contacts the Appeals Court Clerk's Office. The request must identify the case name, Appeals Court docket number, exhibit number, and a brief description of the item. The Clerk will enter an order on behalf of the panel or Single Justice and transmit it to the lower court. When the exhibit arrives, it will be docketed as "received" by the Appeals Court and will be brought to the requesting judge(s) for review.

Original exhibits must be handled and tracked carefully because they must be returned to the lower court. If possible, exhibits will be scanned into the court's document management system (video and audio recordings may be stored in the document management system where feasible and also be kept in the case folder in their original medium). The panel or Single Justice should inform the Clerk whether the original may be returned to the lower court or be kept in the Clerk's Office safe until a decision issues. The preference is to return original exhibits as soon as possible.

## **E. Closing of a Case**

Pursuant to Mass. R. A. P. 23, the Clerk's Office issues the rescript to the lower court. When the rescript is issued, the case is closed. Any cases that are dismissed by order are closed. Any paper filings are recycled upon confirmation they were scanned to PDF. All PDFs in closed cases are converted to PDF-A archive standard for preservation.

## **F. Record Retention**

The Clerk's Office retains the case records in different media depending upon the decade and type of filing. For example, records are kept in index cards, microfiche, PDF, and paper. Current public records are maintained in the document management system.

## **G. Materials Sent Directly to Judges**

Parties or counsel for parties shall not communicate directly with a judge regarding a case. If such communication is attempted, the communication will be re-directed immediately to the Clerk's Office for processing.

## **H. Requests for Reasonable Accommodations under The Americans with Disabilities Act ("ADA") of 1990**

- i. General. The ADA is a wide-ranging civil rights law that prohibits discrimination based on disability. The goal of the ADA is equality. The Appeals Court wants to ensure that people with disabilities have the same rights and access to programs, services, and activities as other court users.
- ii. What is a Disability Under the ADA? The term "disability" means (1) a physical or mental impairment that substantially limits one or more major life activities of an individual; (2) a record of such impairment; or (3) being regarded as having such an impairment. The term "disability" is broadly construed. The determination whether a particular condition is considered a disability is made on a case-by-case basis. Where appropriate, the Appeals Court may request medical information to help make a determination about a disability. The term "disability" in the context of the ADA does not include environmental, cultural, or economic disadvantages. In addition, it does not include current, illegal use of a controlled substance.

- iii. What is a Reasonable Accommodation? A court user invokes the ADA by requesting a "reasonable accommodation. " A "reasonable accommodation" is a modification, adjustment, or alternation to rules, policies, practices, and procedures that enables a "person with a disability" to participate in the programs, services, or activities offered by the Appeals Court.
- iv. Determination of Reasonableness. When considering whether a request for an accommodation is "reasonable," the Appeals Court evaluates whether such request would fundamentally alter the nature of its programs, services, or activities. Where the request affects the judicial process (such as an extension of time), the effect on the other parties is part of the reasonableness determination. Each request is evaluated on a case-by-case basis and is not automatically granted.
- v. How to Request a Reasonable Accommodation. The Appeals Court has a form that court users can complete and submit to the ADA Coordinator to request a reasonable accommodation. The form is located on the Appeals Court's website [here](#). Court users are asked to specify both the individual limitations requiring accommodation and the type of accommodation(s) requested.
- vi. The ADA Coordinator. The role of the ADA Coordinator is to assist with ADA matters involving court users. The ADA Coordinator can be contacted for additional information at [AppealsCourt.ADACoordinator@jud.state.ma.us](mailto:AppealsCourt.ADACoordinator@jud.state.ma.us).
- vii. ADA Accommodation vs. Merits of the Case. A request for a reasonable accommodation under the ADA is separate and distinct from the underlying legal matter on appeal. For example, a party's request for additional time to respond to a motion does not change the legal standard that the party must meet in opposing the motion. The merits of a case are not determined by an ADA request for a reasonable accommodation.

## **VIII. Filings and Case Entry**

### **A. Filings and Entry of Cases**

- i. Filings/Conversion of Paper Documents/Fees/E-filing

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- a. Filings and Procedures. The Appeals Court accepts filings and makes docket entries of filings and orders pursuant to the detailed provisions of the Massachusetts Rules of Appellate Procedure and the Rules of the Appeals Court. The court accepts filings in person, by mail, and electronically. The court does not accept filings by fax. An entry of each filing is made in the docket of the appropriate case.
  - b. Document Review. The court reviews incoming filings to determine whether they comply with the rules governing the form and content of the documents. The court may reject a nonconforming document. A nonconforming document may be returned to the filer for correction through the e-filing system with instructions on how and when to correct the document.
  - c. Conversion of Paper Documents. For filings accepted in paper form, the Clerk's Office scans the filing to PDF. Any paper document is stored in the basement file room until the case is closed.
  - d. Fees and Costs. The Clerk's Office charges fees and costs pursuant to the fees schedule posted [here](#). Payments may be made in cash, by check, by the card terminal at the counter, or electronically via court-approved vendors (e.g., eFileMA.com).
  - e. Electronic Filing. The Appeals Court offers parties the ability to electronically file documents via eFileMA.com. Educational content is available [here](#).
- ii. Entry of Cases

The Clerk's Office accepts notices of assembly from the Trial Court departments and from some state agencies. Criminal cases are docketed upon receipt of the assembly. Civil assemblies are organized and stored pending the appellant's payment or court waiver of the required docket fee. Cases are categorized on either the "P" panel or "J" Single Justice docket, with subcategories depending on the case type (civil or criminal) and case nature. Cases are also designated pursuant to law, court order, or court policy as public, partially impounded, or impounded. The Clerk's Office reviews any civil notices of assembly which have not been timely entered by the appellant and issues an advisory notice of such to the parties and the lower court.

In civil cases involving a self-represented party, the court sends a notice of

some available resources for self-represented parties.

## **B. Motions**

Motions are docketed and screened by the Clerk's Office. The Clerk and Assistant Clerks have authority to act on motions requesting procedural relief. See M.A.C. Rule 15.0(a). The clerks will refer some motions for procedural relief to the Single Justice or to a panel for resolution. Motions for substantive relief are directed in the first instance to the Single Justice if the case is not assigned to a panel, or to the assigned panel.

## **C. Procedural Defect Screening**

Upon review of a recently docketed panel case, the Clerk's Office may issue a show cause order identifying a potential procedural defect and, if appropriate, requiring the appellant to file a response. After review of the response, if appropriate, a clerk raises the issue to the Single Justice for review and possible resolution. The Single Justice may enter orders to assist in this review, including allowing a motion to enlarge time to file a notice of appeal or to pay the docket fee late. However, the Single Justice may not order the dismissal of an appeal. See Mass. R. A. P. 15(c). When a dismissal may be warranted, a panel is convened to review the case record and to enter any appropriate order.

# **IX. Briefing**

## **A. Motions to Extend Brief Due Dates**

- i. Civil and Criminal Cases -- Generally. Extensions are governed by the policy adopted by the Appeals Court in 1998, which states:

"Beginning October 1, 1998, and excluding child civil welfare cases, it shall be the policy of the Appeals Court, implemented through the Clerk's Office and the Single Justice, with respect to motions to enlarge the time for filing briefs prescribed by Mass. R. A. P. 19(a), to grant no more than one motion for enlargement of time per side, the enlargement being sought not to exceed 120 days, and then only on the basis of an affidavit of counsel setting forth (a) good cause to warrant the requested enlargement and (b) an explanation why the particular time period requested is reasonable. Further enlargements of time will ordinarily not be granted

absent genuine emergency such as a death, illness or serious injury."

The court has applied the policy liberally and may permit a party to file multiple requests for extensions and, upon good cause, to exceed 120 days of enlargements.

- ii. Requests for Enlargement Totaling Less Than 120 Additional Days. The assistant clerks are authorized to act on first and subsequent requests seeking, in total, less than 120 days.
- iii. Subsequent Requests Totaling More Than 120 Additional Days. As a matter of practice, the Single Justice is normally presented with subsequent requests for enlargements of time which, if allowed, would bring the total enlargement to more than 120 days. Each case is measured by a variety of considerations including the history of prior extensions for the movant, the "good cause" grounds raised in the supporting affidavit, any prior Single Justice order, any opposition, whether the defendant is incarcerated, or a civil appeal bond was posted, and any grounds raised by motions.

#### **B. Notice to Appellee Who Does Not File Brief**

There is no requirement that an appellee file a brief. Mass. R. A. P. 19(e). In cases where no appellee brief is filed within the time limits provided by the rules or within any period of extension granted, the Clerk's Office issues a notice to the parties observing that the appellee's brief is overdue and that a motion to enlarge the time to file a brief, accompanied by a brief, is due or the case will be placed in ready status to be considered by a panel. The order requests the appellee to notify the court in writing if the appellee does not intend to file a brief.

In criminal cases where the Commonwealth is the appellant, the court follows the procedures outlined in Commonwealth v. Goewey, 452 Mass. 399 (2007). The court will enter an order directing the defendant to file a motion to enlarge the time to file a brief, accompanied by a brief, or otherwise notify the court in writing that the defendant is deliberately forgoing the filing of the brief. If this does not prompt a response, a clerk will contact the Committee for Public Counsel Services (CPCS) to learn if counsel was appointed, and if so, to allow CPCS to follow up with appointed counsel as necessary. If the defendant is represented by private counsel, an order will be entered warning that counsel may be referred to the Board of Bar Overseers if no response to the notice is filed. In the rare case that a defendant-appellee in a criminal case is self-represented, a clerk will confirm the defendant's mailing address and

ensure the defendant receives notice regarding the overdue brief.

### **C. Special Cases**

- i. Expedited Cases. The Appeals Court may expedite an appeal by suspending the requirements of any appellate rule on its own motion or on application of a party. Mass. R. A. P. 2. Thus, a Single Justice can expedite the appellate process by shortening the time limitations for performing certain acts by counsel or the court. The court's practice is for the Single Justice to confer with the Chief Justice or the Chief Justice's designee before entering an order to expedite.
- ii. Child Welfare Cases. All motions to enlarge time to file briefs due in child welfare cases are presented to a specific single justice for review and action. The court's 120-day policy does not apply to child welfare cases because these cases are time sensitive, and the court's policy is to have them briefed and decided as expeditiously as possible.

### **D. Ready Cases**

A case is designated as "ready" for screening and submission to a panel, via argument or non-argument, when either the appellee's brief has been filed or when the appellee is determined not to be filing a brief. The court's determination that an appellee will not be filing a brief is usually made when the time for filing the appellee's brief has expired, and the appellee has either not responded to the court's notice that the brief was overdue or has indicated in response that the appellee will not file a brief. Every appeal is assigned to a panel of judges as soon as reasonably possible after the final brief is filed. Any case that becomes ready by February 1st will be assigned to a panel for review and decision, with or without oral argument, by the end of the court's current term.

## **X. Case Screening and Distribution**

### **A. Substantive Screening**

Almost all cases are screened to assess whether they should receive oral argument. See M.A.C. Rule 23.0(1). Appeals of some categories of cases, which can vary from time to time, or cases which are ordered expedited by a single justice, are not screened; they are automatically scheduled for oral argument (e.g., child welfare appeals).

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All other cases are screened by staff attorneys. Cases receiving argument are designated internally as "A." Non-argument cases are designated internally as "B."

The screening determination is not binding on the panel of judges assigned to decide the case. A non-argument case will receive oral argument if one judge on the panel thinks it should be argued.

### i. Criminal Screening

- a. The Clerk's Office prepares a weekly report of "ready" criminal cases which it emails to the Chief Staff Attorney or their designee for screening.
- b. The criminal screening attorney reviews the relevant case materials for each ready case and designates each case as either A, for a case requiring oral argument, or B, for a non-argument case. The screening attorney transmits the designations to the Clerk's Office.
- c. The Clerk's Office enters the case designations into the case management system (CMS).

### ii. Civil Screening

- a. Twice per month, the Chief Staff Attorney runs a CMS report for civil cases which became "ready" during the prior period.
- b. The Chief Staff Attorney assigns cases to staff attorneys to screen and prepare a brief memorandum for the court.
- c. The screeners email their completed screening memos to the Chief Staff Attorney and any designee(s), who review the memos and consult regarding the screener's conclusion. After consultation, the case designations (A, case requiring oral argument, or B, non-argument case) are finalized, and the screeners are instructed to place each finalized screening memo into the folder for the case in the document management system (DMS). A screening memo is confidential.
- d. The Chief Staff Attorney enters the case designations on the screening spreadsheet in the DMS and emails a copy of the completed spreadsheet to the Clerk's Office.

- e. The Clerk's Office enters the case designations into the CMS.

## **B. Distribution of Cases**

- i. Case Distribution. Once the oral argument list is finalized, the Clerk's Office notifies all court personnel by email that the PDFs are in the DMS for cases scheduled for argument and for non-argument cases. Motions or documents that are filed after a case is assigned to a panel are scanned into the DMS and emailed to the panel.
- ii. eDelivery of Cases. Each secretary prepares an oral argument folder (for each sitting) in order to electronically transfer the cases to their assigned judge(s). The folder contains the entire content for the entire argument list, any screening memoranda, and the case assignments. As part of the process for preparing the judges' cases for their iPads, secretaries create open motion sheets and review the docket sheet to identify any pending open motions. All pending motions at that time are listed on the open motion sheet. The staff attorneys create open motion sheets for all expedited appeals and single justice cases that become panel cases and travel swiftly through the process.

## **C. Case Folder Review**

Upon notification that the panel cases have been populated in the CMS, the Operations Manager will assign each secretary 2-3 oral argument days per month to review. Under this review process, the entire case folder content in the DMS for all cases scheduled on each of those days will be examined and converted into searchable PDF documents using Optical Character Recognition software (OCR'ed) if needed. Upon completion of review, the secretary will notify the Clerk's Office either that all relevant documents are available and complete, or that issues were discovered and follow-up is required. The Clerk's Office will reach out to counsel either to resolve the issue or to report that the filing or matter is "as complete" as counsel can submit. Upon notification that the matter is resolved, secretaries can begin to deliver the cases to the judges.

Linking and Workflow for Illegible Pages. The secretaries review the PDFs in the DMS for legibility of each page and completeness. If there are any illegible copies, they email the Clerk's Office specifying the problem. The Clerk's Office enters an order requesting that the filing party file either a more legible copy or a letter stating that no better version exists. If the Clerk's Office receives clearer copies, they are substituted for the unclear pages.

## **XI. Oral Argument – Scheduling, Changes, and Conduct**

### **A. Assignment of Cases to Panel**

Assignment of cases to a panel is performed by the Clerk under the supervision of the Chief Justice or the Chief Justice's designee. Cases are assigned by blind draw in a manner over which neither the judges, the lawyers, nor the litigants have any influence. The court's practice is to schedule three civil cases and three criminal cases at each sitting, depending on case inventory and the court's needs.

### **B. Staggered Appearance Times**

Notices are sent in cases scheduled for oral argument advising the parties that their appearance time is based on the order that the case is listed on the court's argument calendar, found [here](#).

Attorneys or parties presenting argument in a case are required to appear no later than:

- 9:30 a.m. for cases #1, #2, and #3;
- 10:30 a.m. for cases #4 and #5; and
- 11:00 a.m. for cases #6 and any #7.

As the order in which cases will be heard is subject to change, parties are cautioned to check the court's calendar close to the date of argument to confirm the order of cases on the argument list. Upon request and at the court's discretion, a case may be designated as "call first," "call second," or "call last."

### **C. Courtroom Recording**

The Clerk's Office staff trains the law clerks how to operate the court's digital audio recording system and livestream platform. A staff member attends the first argument of each session to assist the law clerk. After the session is completed, the law clerk delivers the appearance slips to the Clerk's Office. Law clerks also may be trained to assist on the court's remote videoconference platform.

### **D. Changes to Oral Argument List**

Occasionally, there will be changes to the argument list. Sometimes, cases come off the list; other times, cases move from one day to another or sometimes settle before being heard. Regardless of the reason, the Clerk's Office immediately notifies the

panel, their secretaries, the court officers, and the parties.

Another type of change to the list is a panel change. When a judge needs to be recused from argument, the panel will reflect a change, notice similarly generates immediately to internal court personnel, and the court's online argument calendar will be updated.

#### **E. Cancelling/Postponing Oral Arguments**

For different reasons including inclement weather a scheduled panel sitting may need to be cancelled. If the court is open or no closure decision has yet been made, a panel has discretion to cancel a sitting, provided it has received the Chief Justice's approval. When a panel is cancelled, the Clerk's Office notifies the parties by email and/or telephone. When the court is closed, the court's website and listserv provide notice, and parties can call a dedicated "weather cancellation" line (617-725-8114) for a recorded message.

The court always reschedules a cancelled argument. The sitting is scheduled on a date selected by the panel. Sometimes attorneys cannot attend on the new date. In those situations, the panel decides whether to find an alternative date or have the parties submit on the briefs.

Instead of cancelling and rescheduling a sitting, the panel may convert the sitting to be held remotely by videoconference. This decision requires advance notice to the Clerk's Office personnel so they may notify the parties and prepare the necessary videoconference hearing.

#### **F. Scheduling a Non-argument Case for Oral Argument**

A panel may decide to hear argument on any case that was previously screened as a case not requiring oral argument. The court's policy is for a panel to determine as soon as possible whether any such case should be argued. If a panel wishes to schedule a non-argument case for oral argument, the Clerk's Office will contact counsel and finalize the scheduling with notice to the panel and parties.

#### **G. Conduct of Panel Oral Arguments**

Barring unusual circumstances, the court's panel sittings begin at 9:30 a.m.

Customarily, each side receives 15 minutes of oral argument and there is no rebuttal. The panel, whether in response to a written motion or otherwise, may extend the length of argument.

The panel chief is responsible for calling the morning break, which should not exceed 15 minutes. The panel chief should let those who are attending court know when to expect the panel's return to the bench.

Judges wear black robes and white shirts or white collars or scarves.

There is no required order to questioning by the judges (either by seniority or otherwise).

## **XII. Oral Argument – Policy Regarding Motions for Remote Oral Argument in Panel Cases**

### **A. Policy**

The Appeals Court will conduct oral arguments in panel cases in person at the John Adams Courthouse unless the Appeals Court as a whole for some reason (e.g., public health emergency) changes the practice for a particular time period. Cases the court schedules for off-site (“away”) sittings will not be conducted remotely. The Single Justice may conduct argument in whatever format they deem best in the circumstances.

In individual panel cases, where there is good cause, the court may allow parties to participate remotely (a) by telephone, (b) by remote videoconferencing, or (c) by some combination. In all cases, public access to the argument will be maintained.

Any party may file a motion for remote oral argument (“Motion for Remote Oral Argument”). All motions for remote oral argument must be made in writing, electronically filed, with service on all parties, as soon as practicable and no later than 21 days before the scheduled argument, unless based on an unforeseeable circumstance that arises thereafter.

The motion must state (i) the reason(s) establishing good cause for the request, (ii) that the moving party has conferred with all parties, (iii) the position of all parties with respect to the movant’s request and whether they also desire to argue remotely, and (iv) if applicable, the reason(s) why the motion is untimely. Motions that do not include the required information may be summarily denied without prejudice to refile with the required information.

Agreement of all parties to argue remotely shall not, in itself, be sufficient to constitute good cause. Factors that the court will consider in determining good cause include health, hardship, safety, whether all parties consent, the issues presented in the

case, the timing of the request, and the panel's preference based on the case and circumstances of the motion.

The court will act on the motion as soon as practicable. The court may alternatively order the argument rescheduled or postponed.

**B. Notes regarding good cause factors.**

Health. Generalized concern about contracting illness, standing alone, does not constitute good cause. However, if there is a particularized showing that in-person argument poses a health risk, good cause may be found. Any counsel diagnosed with, or experiencing symptoms of, a contagious disease is expected to notify the court at once and to express a preference between remote argument and postponement.

Hardship. The generalized hardship of appearing for in-person argument that is caused by things such as distance from the courthouse, the expense of appearing in person, the time required to appear in person, or scheduling conflicts, is not good cause. Rather, good cause based solely on hardship requires a showing of unusual circumstances. Factors that may be considered include whether the party is self-represented, the details of a particular scheduling conflict, unusual financial circumstances that make the cost of in-person argument prohibitive, or other exceptional circumstances.

Safety. If in-person argument would pose a safety risk (such as in the case of inclement weather) to the litigants, counsel, judges, or court personnel, the court may order remote argument unless rescheduling the in-person argument would resolve the safety concern.

Cases involving a self-represented party confined to an institution. A self-represented party confined to an institution will be allowed to participate via remote technology, preferably using a videoconference platform. Consistent with the court's existing practice, the other party(ies) must participate using the same platform.

### **XIII. Oral Argument – Public Access, Livestream, and Archive Policy**

The Appeals Court regularly conducts oral argument hearings of its cases, including hearings held by panels of judges and by a single justice. All oral arguments are accessible to the public as described below. To help build the public's knowledge and maintain public confidence in the judicial system, the Appeals Court livestreams its panel oral argument sessions, some single justice hearings, and select Appeals Court events, for public viewing at no charge on the [Appeals](#)

[Court's YouTube channel \(YouTube\)](#).<sup>1</sup> Video recordings of livestreamed oral arguments in panel cases then typically remain archived and available on YouTube for informational and educational purposes. Separately, the court also posts audio-only recordings of oral arguments on its [public docket page](#).

#### **A. Oral Arguments Before a Panel of Judges at the John Adams Courthouse**

The Appeals Court strongly favors in-person oral arguments. In-person arguments are typically held at the John Adams Courthouse and are open to the public.

A party whose case is scheduled for an in-person oral argument may file a motion for remote argument consistent with the Appeals Court's [Policy Regarding Motions for Remote Oral Argument in Panel Cases](#). The panel of judges can allow or deny the motion, reschedule the argument, or order a hybrid argument. A hybrid oral argument occurs when one or more participants are permitted to appear remotely during an argument that is being conducted in-person at the courthouse.

Remote and hybrid oral arguments are court proceedings and all parties are expected to conduct themselves as if they were physically in the Appeals Court courtroom. Remote and hybrid oral arguments are held via the Zoom videoconference platform and can be watched live online on YouTube. A hybrid argument can be watched live either in person or on YouTube.

Except as ordered in a particular case by the Appeals Court on motion or on its own initiative, the court, as technical operations allow, will livestream all oral arguments in panel appeals and make them available online to the public at no charge on YouTube. A person may activate the YouTube subtitles/closed captions feature (the "CC" icon) of an archived oral argument. The court disables the YouTube live chat, comments, and embedding options for its livestreams and archived videos.

#### **B. "Away" Panel Oral Argument Sessions.**

The Appeals Court annually conducts several "Appeals on Wheels" sessions in locations around the Commonwealth as part of its educational mission.<sup>2</sup> Away sittings are held at colleges, law schools, courtrooms of the Massachusetts Trial Court, or

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<sup>1</sup> A "live" proceeding in the courtroom becomes visible on the YouTube channel after approximately 30 seconds.

<sup>2</sup> Any organization that would like to host an Appeals Court sitting may contact the court at [apcadmin@jud.state.ma.us](mailto:apcadmin@jud.state.ma.us). All requests will be reviewed to ensure appropriate facilities, engaged partners, and a suitable level of interest within the community in attending argument.

other suitable locations. These so-called "away" sittings also provide opportunities for the judges to meet and speak with a broad range of citizens in relatively informal settings. These sittings might not be livestreamed where the host does not have its own livestream capability, but the Appeals Court will later post an audio recording of each oral argument on the court's online [public docket page](#).

### **C. Single Justice Hearings.**

Depending on the nature of a single justice matter, a hearing is either required by law or is within the single justice's discretion to hold. Hearings required by law frequently involve a self-represented party's indigency status. See G. L. c. 261, § 27D (indigency determination); G. L. c. 239, § 5 (summary process appeal bond). Other hearings involve a motion to stay an eviction pending appeal, which may involve consideration of a party's indigency or financial status. The Appeals Court typically will not archive these types of matters on YouTube because they implicate substantial privacy concerns related to a party's finances.

The single justice traditionally conducts hearings in person. Such hearings are open to the public. In-person single justice hearings will not be livestreamed or publicly archived on YouTube, except as directed by the single justice on motion or at the justice's own initiative (e.g., for a matter of significant public interest).

The single justice may order a remote hearing. Remote single justice hearings will be livestreamed but not publicly archived on YouTube, except as directed by the single justice on motion or at the justice's own initiative (e.g., for a matter of significant public interest).

### **D. Audio Recordings.**

The Appeals Court's internal audio recording system is the official recording of the oral argument. Neither the livestreamed audio nor video is an official record. The Appeals Court posts an audio recording of each panel oral argument on the court's online [public docket page](#), which is available at no cost for listening and downloading. Duplicates of the Appeals Court's official audio recordings may also be purchased upon request and payment of a \$50.50 fee as explained [here](#).

Audio recordings of single justice hearings are not posted online unless otherwise ordered. As stated above, the Appeals Court does not post these recordings online because the matters typically involve substantial privacy concerns regarding a party's indigency.

**E. Court Redaction or Removal of Audio or Video Recordings.**

The court on its own initiative may take appropriate measures to protect a party's rights or safety, preserve the dignity of the court proceeding, or ensure the orderly conduct of the proceeding by redacting or removing a portion or the entirety of an audio or video recording from online access. (Examples of such redactions could include clipping out an audio or video segment or blurring a portion of the video.)

**F. Protection of Impounded or Sensitive Information.**

Due to federal or state law or court policy or order, the Appeals Court does not provide online all details of certain cases. This applies to all or certain case information or records in various case types including adoption, child welfare, domestic relations, juvenile matters, mental health, sexual assault, and cases that fall within the scope of the federal Violence Against Women Act such as a proceeding involving application for an abuse or harassment prevention order.

During oral argument of any case involving impounded information or pseudonyms, litigants and their counsel must be vigilant to not disclose impounded information. See Mass. R.A.P. 16(d), 16(m), and 18(d).

Any inadvertent disclosure of protected information must be raised to the presiding judge(s) and clerk of court as soon as possible. In such circumstances, the court will redact or remove the video and audio of the oral argument.

**G. Recording Prohibited Without Court's Permission.**

YouTube Terms of Service prohibit the reproduction, photographing, recording, distribution, embedding, and rebroadcasting of any part of the materials available on the Appeals Court's YouTube channel without the prior written consent of the Appeals Court. This prohibition is consistent with the Supreme Judicial Court's rules currently in place regarding members of the public physically present in a courtroom. See S.J.C. Rule 1:19. As mentioned above, audio recordings are available on the [public docket page](#) and from the clerk's office upon request. Requests for written permission to record or copy any portion of a livestreamed or archived recording should be directed to the Appeals Court Administrative Office at [apcadmin@jud.state.ma.us](mailto:apcadmin@jud.state.ma.us) or 617-722-6128.

## **H. Other Recording and Broadcasting.**

A registered person may request to record or broadcast a proceeding in accordance with [S.J.C. Rule 1:19](#).

## **I. Advertisement Policy.**

Advertisements are placed solely by the host site (YouTube) and are not chosen or endorsed by the Appeals Court.

# **XIV. Semble, Decision Writing, Editorial, and Issuance of Decisions**

## **A. Semble**

### **i. General**

The panel sembles all cases, whether argument or non-argument. Argument cases are ordinarily sembled immediately after oral argument. Non-argument cases are sembled on a date the members of the panel choose within the month to which the case has been assigned.

What is said during semble is confidential and shall not be disclosed outside the court.

### **ii. Form of Decision**

No case can be published unless it has received oral argument, or the parties declined the court's invitation to conduct oral argument.

All unpublished decisions must be unanimous, both in stated reasoning and outcome. If there is a split on the panel, the decision must be published.

## **B. First Panel**

The author writes on behalf of the panel, not on behalf of themselves (unless writing in dissent or in concurrence).

All drafts must be approved by the panel (also known as "First Panel").

The authoring judge should circulate a final draft, usually by email, to the other members of the panel for their review, commentary, and approval.

If there is a split of opinion, First Panel should re-semble to identify and frame the disputed issue and to determine if the original written draft will be the majority opinion, a dissent, or a concurrence, depending on which position the third panel member supports.

A judge writing separately (either in concurrence or dissent) should circulate their draft within two weeks of receipt of the majority opinion. At each subsequent iteration of drafts, each author should circulate a draft as quickly as possible so as not to cause delay.

### **C. Second Panel**

Emails sending drafts to the justices for review shall be sent from the same email address in all instances.

Judges shall have 14 calendar days to respond to circulated drafts. A reminder email shall be sent after 10 days to those judges who have not responded.

No opinion (whether unanimous or divided) may be released without an approving response from a majority of judges. Only an affirmative statement of approval may be counted for these purposes; silent acquiescence is not to be counted as an approval.

If a majority is not received by the end of the 14-day comment period, the author shall follow up with the judges who have not responded.

Substantive comments shall be sent to First Panel in the first instance for unanimous opinions. The author shall respond thoughtfully to the comments, be open to change, and be willing to withdraw the opinion from further Second Panel consideration while changes are made.

If a judge's disagreement with a unanimous opinion is serious, then the judge may -- after discussion with the author -- send it to the entire court.

When commenting on split opinions, judges are encouraged to provide an explanation for their expression of a view favoring the either the majority or the dissent.

Judges are discouraged from publicly disclosing Second Panel commentary.

## **D. Editorial**

### **i. Policies and Procedures for Judges**

All opinions, rescripts, and Rule 23.0 decisions are reviewed by staff attorney editors. The authoring judge should promptly inform their secretary when a case is ready to be sent to editorial. A Rule 23.0 decision can be sent to editorial as soon as First Panel has approved it. A published opinion or rescript should not be submitted to editorial until two weeks after it was circulated to Second Panel, or until enough Second Panel approvals to constitute a majority have been received, so that the editorial staff does not begin working on the case prematurely.

If the decision reverses the conviction of an incarcerated defendant (in such a manner that the defendant will be entitled to immediate release or a bail hearing), the authoring judge should highlight that fact when the case is submitted to editorial so that the case will receive expedited treatment. If the authoring judge believes a case requires expedited treatment for other reasons, the judge should consult with the Chief Justice.

### **ii. Policies and Procedures for Secretaries**

- a. Each secretary must electronically log each case into editorial and, when applicable, electronically transmit the decision to the Reporter's Office or to the Clerk's Office for processing.
- b. Upon notification that a case is ready for editorial, each secretary:
  - 1) Reviews the document for minor formatting issues and ensures that the document was created using the appropriate macro.
  - 2) Electronically moves the case to the e-editorial folder and electronically locks the version placed into editorial.
  - 3) Logs the decision in on the appropriate e-spreadsheets, noting any special comments to the editor.
  - 4) Creates a rescript cover.
  - 5) Creates an Open Motion Sheet if one has not been created yet.
  - 6) Updates the tracking log for the justice.
- c. Occasional changes to a decision in Editorial. Sometimes a case in editorial is recalled. When changes are made to a decision while the decision is under editorial review, the document must immediately be pulled back and replaced with an updated copy. If the case has already been assigned to an editor, that

editor should be notified immediately by email and telephone.

- d. Post-editorial process. When a case returns from editorial:
  - 1) The judge reviews the comments and then discusses them with the editor, who ordinarily will make the changes approved by the judge.
  - 2) Once the changes have been accepted, the case is ready for the next step.
  - 3) For Rule 23.0 decisions, the case is ready for release (see Rule 23.0 list instructions at XIV.F.iii).
  - 4) For full/rescript opinions, the decision is electronically transmitted to the Office of the Reporter of Decisions where it is reviewed mostly for conformity with the [SJC Style Manual](#).
  - 5) The secretary updates the tracking log for the justice.
  - 6) The secretary updates the Reporter's book in the DMS.

iii. Policies and Procedures for Editorial Staff

- a. Case Assignment. Editors sign out or are assigned cases in the order in which they were added to the list, although opinions are given preference over Rule 23.0 decisions. Child welfare cases are expedited and are assigned to or signed out by designated editors. Decisions that reverse the conviction of an incarcerated defendant (in such a manner that the defendant will be entitled to immediate release or a bail hearing) also receive expedited treatment. Other cases may be expedited with the Chief Justice's or the Chief Justice's designee's approval.
- b. Initial Review. Editors should carefully review the Appeals Court docket, the case materials in the "Docket" folder in the DMS, the notice of appeal, the briefs, and the record.
- c. Editing. The following is a nonexclusive list of things editors should review: formatting, docket number, caption, text, and the judgment or disposition of the appellate court (also known as the "snapper"). Margin comments are helpful to explain any proposed substantive changes.
- d. Judicial review of proposed edits. The editor should email a tracked changes version of the document to the judge and copy the judge's secretary on the email. The email should bring to the judge's attention any open motions that the panel needs to resolve.

- e. Finalizing the decision. Once the judge has resolved the proposed changes, editors should go back into the document in the DMS and accept/reject the changes as necessary (most judges leave this to the editor) and delete all comments. Editors should turn off track changes when the decision is finalized, proofread the decision again, and note the disposition of the open motions on the open motion form, adding the date the form was updated.
- f. Rescript cover. If there is no rescript cover in the Opinion/Decision folder, editors should check to see if one is required. If one is required, the editors should ask the secretary to prepare one. Editors should proofread the entire rescript cover and also make sure the snapper is consistent with the final version of the decision.
- g. Notify the secretary. Once the decision and rescript cover are complete, editors should inform the judge's secretary that the case can be moved to the next stage (e.g., to a Rule 23.0 list, to the law clerk for a final Shepard's review, or to the Reporter's Office, all depending on the type of case involved and the particular judge's practices).
- h. Revisions to decisions after release. If the Chief Staff Attorney or designee is notified that some aspect of the decision may need to be revised after the case has been released, the Chief Staff Attorney or designee notifies the editor of the decision. The editor confers with the judge concerning any necessary revisions. A revised decision is forwarded to the Clerk and the Reporter of Decisions accompanied by an order of the panel summarizing the revisions.

#### **E. Process for Published Opinions after Transfer to the Reporter's Office**

- i. Policies and Procedures for Judges

There is a general presumption that Appeals Court opinions will follow the conventions of the current version of the [SJC Style Manual](#) published by the Reporter of Decisions.

The Reporter's Office will send its proposed changes to the authoring judge for the judge's review and approval before an opinion is released. It is the judge's responsibility to respond promptly to the Reporter's suggestions.

- ii. Policies and Procedures for Secretaries

Each secretary must electronically log each case into editorial and, when applicable, electronically transmit the decision to the Reporter's Office or to the Clerk's Office for processing.

When a case is returned from the Reporter's Office, the judge reviews any proposed edits and advises the Reporter. Thereafter, the judge's secretary prepares the case for release.

iii. Policies and Procedures for Editorial Staff

When the Reporter's Office completes its review of a published opinion or rescript, it emails the editorial staff indicating the date the case is to be released. The editor of the case (or designee in the editor's absence) should check for open motions in the CMS and update the open motion sheet, indicating the date the check was made.

**F. Issuance of Decision**

i. Generally

The Clerk's Office issues notice to the parties each day of any opinions and Rule 23.0 decisions scheduled to be released by the Reporter of Decisions at 10:00 a.m. on each business day. The Reporter of Decisions posts the identity of opinions being published that day at 8:00 a.m. See [here](#). The Reporter also posts the notice on X (formerly known as Twitter). The Clerk's Office does not provide public access to or copies of the decisions until after 10:00 a.m. Electronic notice is sent to the parties with a copy of the decision and rescript.

ii. Time Standards

As provided by SJC Order (which can be found [here](#)), all decisions (whether published, rescript, or unpublished) should be released within 130 days from argument or submission without argument.

One hundred days after argument or submission, the Operations Manager and/or the secretaries will email the panel a reminder that the 130th day is approaching and that an order will enter waiving the SJC administrative guideline unless a decision is issued before then.<sup>3</sup>

After 130 days, the secretary will email the Clerk's Office and the panel, which will enter the following standard order of the panel with notice to the parties:

"The one-hundred-and-thirty-day guideline for the above-entitled case is waived

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<sup>3</sup> In situations where after argument/submission a panel enters a stay of proceedings (e.g., remand for findings, pending SJC decision on related issue, etc.), the computer tracking system does not allow for discounting the accruing time. An email reminder will still issue to the panel and the waiver order will still enter at 130 days, but it is not to be construed negatively as to the author or panel.

by order of the Court. (Judges 1, 2 & 3)"

Judges are responsible for keeping track of the cases for which they are the author.

iii. Rule 23.0 List

When a Rule 23.0 list of cases to be released is prepared by the secretary assigned to that list day, the secretary will notify the list editor(s) assigned to that day. The list editor will retrieve the list, all copies of the Rule 23.0 decisions, all rescript covers, and all copies of the open motion sheets for the cases scheduled for release. The list editor corrects any errors on the list document itself and applies best practices for snapper content. The list editor edits the four corners of the Rule 23.0 decisions and the rescript cover, and makes the corrections on the documents stored in the DMS. The list editor also checks the docket and updates the open motion sheet. If a problem is detected with a decision on the list, the list editor will contact the editor of the decision and/or the author in an attempt to resolve the problem quickly. If the problem cannot be resolved quickly, the list editor will ask the list secretary to remove the case from the list until the problem can be resolved and will notify the author's secretary that the release of the case is being delayed. The removed case will be returned to the original editor and, once finalized, placed on the next available list.

## **XV. Post-Argument and Post-Decision Motions**

It is the authoring judge's responsibility to evaluate post-argument submissions and to make a recommendation to the co-panelists as to how the motion should be handled. All post-decision submissions should be resolved expeditiously.

If the panel has decided that a motion for reconsideration or modification is to be denied, the authoring judge is responsible for informing their secretary so that the secretary can prepare the panel's order and transmit it to the Clerk's Office for docketing.

If a motion for reconsideration or modification is allowed to the extent that changes will be made in the decision, the authoring judge will notify their secretary and the editorial attorney who reviewed the decision. The editor will ensure that the appropriate protocol for making changes is applied and an order of the panel and the revised decision is transmitted to the Clerk's Office for docketing.

The court does not customarily allow re-argument.

## **XVI. Single Justice**

### **A. Generally**

Each judge, except the Chief Justice, serves in rotation as Single Justice for one month at a time. In response to periodic requests initiated by the Clerk, the judges select a month in order of seniority.

The Single Justice is responsible for resolving any petitions or motions filed on the court's single justice ("J") docket and any motions filed on the panel docket which the Clerk's Office refers to the Single Justice.

### **B. Filling In at Oral Arguments**

When a judge assigned to a panel needs to be recused from a case or is unavailable to sit, the current Single Justice fills in for the judge. If the Single Justice has a conflict or is otherwise recused, the next month's Single Justice fills in. If that Single Justice has a conflict, the Single Justice for the following month will fill in, and so forth. The judge must notify the panel chief and the Clerk's Office, which will update the docket.

### **C. Convening a Panel**

If a Single Justice matter is complex or significant, the Single Justice may refer the question for review by a full panel. If the matter requires expedited treatment, the Single Justice should ask the Chief Justice that a panel be convened on short notice.

In some matters, the Single Justice alone does not have authority to enter an order and needs two other justices to form a quorum of the court. See G. L.c. 211A, § 3 ("Three justices shall constitute a quorum to decide all matters required to be heard by the appeals court"). For example, a panel is needed to enter an order dismissing a case. See Mass. R. A. P. 15(c) ("a single justice may not dismiss or otherwise determine an appeal or other proceeding"). When a Single Justice orders an appeal to be expedited, depending upon the urgency of the case, the panel may be assembled informally, outside the regular panel scheduling process.

A Single Justice may not convene a panel simply by asking two other judges. The Chief Justice or the Chief Justice's designee should be consulted as to how to proceed. In these circumstances, the Clerk and Single Justice will coordinate to assemble a panel in an appropriate manner with the Chief Justice's or the Chief Justice's designee's approval. Considerations in identifying the additional two judges include the next two months' scheduled Single Justices, seniority, availability, and recusals. The Single Justice will be a member of the panel unless the Single Justice entered

some substantive order that is or could be challenged before the quorum, or the Single Justice is otherwise recused. The decision of the panel is prepared under the regular decision-making process.

## **XVII. Ceremonies and Events**

### **A. Judicial Inductions**

It is the tradition of the Appeals Court to hold a formal Induction Ceremony for all newly appointed justices in acknowledgement of their first sitting.

The Clerk's Office selects three cases to be heard before an expanded panel of the Chief Justice, the new justice, the new justice's mentor, and two additional justices selected by the Chief Justice. The first sitting is typically a regular six-case panel list, with the mentor as a member of the regular panel and the Chief Justice selecting one other judge to sit as part of the expanded panel on the first case. In some circumstances, as an exception to the six-case list, a "special sitting" of only three cases has been scheduled. This could occur when an associate justice is confirmed or sworn in during an ongoing month and it is not feasible to schedule a full list.

### **B. Judicial Portraits**

Proposals to donate a judicial portrait to the court shall be submitted to the Chief Justice. Upon approval, the size requirements will be supplied. Portraits shall conform to a uniform size and framing, in coordination with the Chief Justice or the Chief Justice's designee.

### **C. Retirements**

It is the court's custom to honor retiring justices with a reception in the Rose Library. Non-judicial retirements may also be recognized with the approval of the Chief Justice or the Chief Justice's designee. The format of such recognitions varies.

### **D. Memorials**

It is the tradition of the Appeals Court to hold a memorial for all deceased justices shortly after the one-year anniversary date of their death.

The Chief Justice or the Chief Justice's designee contacts the decedent's family to acknowledge the anniversary, to notify them of the court's memorial tradition, and to arrange a convenient date.

Once a date is selected, the Chief Justice or the Chief Justice's designee writes to the Attorney General and invites them to present a motion to have the speeches offered at the memorial service spread upon the volumes of the Appeals Court Reports. The Court Administrator provides background information for the Attorney General's remarks. In addition to the Attorney General, three other speakers must be chosen: one to represent the court, one to speak on behalf of the decedent's former law clerks, and one to speak on behalf of the bar. Although this varies, the motion is usually supported by two speakers.

The Chief Justice presides at the sitting, which takes place with an expanded ceremonial panel of five justices.

#### **E. Law Clerk Bar Admission**

In December of each year, the Appeals Court holds a private bar admission ceremony for those law clerks who have passed the Massachusetts bar exam. The event is coordinated with the SJC Clerk's Office for Suffolk County, is presided over by the Chief Justice (sitting as Single Justice), and includes motions presented by an attorney representing each candidate for admission (typically, but not always, the clerk's judge).