

MASSACHUSETTS APPEALS COURT

Revised Guidelines Regarding Extension of Due Dates and Other COVID-19 Internal Operating Procedures

REVISED APRIL 28, 2020

The Appeals Court provides this revised statement of guidelines and internal operating procedures to assist the public in understanding the Appeals Court's continued administrative response to the evolving COVID-19 pandemic and related orders of the Supreme Judicial Court. These guidelines are revised in response to the Supreme Judicial Court's April 27, 2020 order in No. OE-144 and supersede earlier guidelines issued by the Appeals Court on March 19, 2020 and April 1, 2020.

I. Clerk's Office. The Clerk's Office of the Appeals Court remains open to conduct court business but the John Adams Courthouse is currently closed to the public and will remain physically closed to the public until at least May 4, 2020. The Clerk's Office is performing regular case management functions with its personnel working remotely while experiencing minimal delays in the processing of filings or issuance of notices. When it is determined that the John Adams Courthouse can reopen, the Clerk's Office will reopen physically only for emergency matters that cannot be resolved virtually until restrictions on other in person matters are lifted by the Supreme Judicial Court.

a. Emergency matters.

1. Emergency matters in the Appeals Court include, but are not limited to, (1) motions under Mass. R. A. P. 6 to stay a judgment or order issued by a Trial Court judge or agency pending appeal upon a showing that application to the lower court for the relief sought is not practicable, or that the lower court has previously denied an application for a stay, or has failed to afford the relief which the applicant requested and (2) petitions for review of an interlocutory order under G. L. c. 231, § 118 (first par.) in case types designated as an emergency matter by the Trial Court where the case is pending (see <https://www.mass.gov/guides/court-system-response-to-covid-19> for the Trial Court standing orders defining emergency matters in each department). The Clerk and Assistant Clerks have discretion to determine what qualifies as an emergency matter.

2. Persons with an emergency matter should contact the Clerk's Office by email at MACClerkEmergency@Jud.State.Ma.Us. The email should include your contact information, any relevant docket number(s), a description of the emergency, and the relief sought from the Appeals Court. This email inbox is monitored by the Clerk's Office and the sender will receive a response during business hours (Mon-Fri 8:00-4:30 excluding state holidays). Persons with an emergency matter may also call 617-723-1527 and leave a detailed message and contact information.

3. In emergency cases and where electronic filing is not practicable, the Clerk and Assistant Clerks may allow filing by other remote means such as email or fax.

4. In-person filings in emergency matters. The Chief Justice of the Supreme Judicial Court has ordered that the John Adams Courthouse be closed to the public until at least May 4, 2020. Until the courthouse is reopened to the public, emergency matters must be filed electronically through eFileMA.com or otherwise remotely as described in section (I)(a)(2)-(3). When it is determined the courthouse can be reopened to the public, the Appeals Court will establish a drop box for emergency paper filings located at the main entrance (plaza side) of the John Adams Courthouse.

b. Non-emergency matters.

1. Although deadlines are tolled as described in section II, the Clerk's Office will continue to accept any voluntary filings of motions, briefs, appendices, and other documents that are filed through eFileMA.com or mailed to the Clerk's Office.

2. The Appeals Court Standing Order Concerning Electronic Filing remains in effect and requires most documents be electronically filed. It is further encouraged that all documents be electronically filed. Indigent parties may use a "waiver account" to waive electronic filing fees and file the affidavit of indigency at a later date as described in section III. For information about establishing a waiver account, see <https://www.mass.gov/doc/adding-a-waiver-account-to-your-firm/download>.

3. The Clerk's Office remains available remotely to answer procedural questions from attorneys, litigants, and the general public. For answers to general questions, please first consult the Appeals Court's website at <https://www.mass.gov/orgs/appeals-court>, in particular the education help pages at [mass.gov/appeals-court-help-center](https://www.mass.gov/appeals-court-help-center), the information about electronic filing at [mass.gov/guides/electronic-filing-at-the-appeals-court](https://www.mass.gov/guides/electronic-filing-at-the-appeals-court), the status of filings at the court's docket (updated hourly) at [ma-appellatecourts.org](https://www.ma-appellatecourts.org), and the court's hearing calendar at [ma-appellatecourts.org/calendar](https://www.ma-appellatecourts.org/calendar). Questions regarding non-emergency matters may be emailed to the Clerk's Office at AppealsCtClerk@appct.state.ma.us.

II. Deadlines. The Supreme Judicial Court's April 27, 2020 Order provides for tolling of deadlines set forth in statutes, court rules, standing orders, guidelines, or by court order. Consistent with this provision, the Appeals Court hereby explains the effect of this order on deadlines in the Appeals Court and the Court's related internal operating procedures.

a. Prior deadlines. Deadlines for filings in the Appeals Court that by operation of statute, court rule, standing order, or court order expired or will expire between March 16, 2020 and June 1, 2020 are hereby extended as provided in section (II)(b). This applies to:

1. Appellate briefs in all case types.

2. Status reports in all case types.
3. Responses or oppositions to motions. However, for any emergency matter, the court or a single justice thereof may require a response to be filed by an earlier date.
4. Motions required by the Standing Order Concerning Dismissal of Appeals and Reports in All Cases for Lack of Prosecution. The Appeals Court will not enter notices or orders pursuant to that standing order until after June 1, 2020.
5. Responses to show cause orders. The Appeals Court will not act on outstanding show cause orders until after June 1, 2020.
6. Mass. R. A. P. 27 motions.
7. Requests to docket civil appeals.
8. Notices of appeal in cases currently pending in the Appeals Court.
9. Petitions seeking relief under G. L. c. 231, § 118 (first par.) and any response to any petition under that section.

b. New deadlines.

1. Deadlines not governed by statute. Any filing deadline in the Appeals Court not governed by statute (e.g., appellate brief or status report) is extended to June 1, 2020. The tolling provisions described in paragraph 12 of the Supreme Judicial Court's April 27, 2020 order are not applicable to non-statutory filing deadlines in the Appeals Court. Non-statutory deadlines are not further tolled beyond June 1, 2020. However, the Appeals Court recognizes the COVID-19 pandemic has significantly limited many parties' ability to prepare filings so further enlargements of non-statutory deadlines are available by motion. A motion to further enlarge a non-statutory deadline based on COVID-19 does not require a detailed description of particular circumstances.

2. Deadlines governed by statute. The new due date for any deadline for filing in the Appeals Court established by statute (e.g., G. L. c. 231, § 118, first par., petition) is to be determined by application of the tolling calculations in Paragraph 12 of the Supreme Judicial Court's April 27, 2020 order.

c. Rescript. Issuance of the rescript of Appeals Court decisions to the lower court pursuant to Mass. R. A. P. 23(c) is stayed. Unless otherwise ordered, the rescript will not be issued until June 1, 2020 or the time for filing motions under Mass. R. A. P. 27 and applications under Mass. R. A. P 27.1 has expired, whichever is last to occur.

III. Mechanics for Docketing Civil Appeals and Single Justice Cases. Consistent with the orders of the Supreme Judicial Court and the Chief Justice of the Trial Court concerning the reduction of in-person traffic in the courthouse and possible transmission of COVID-19, the

Appeals Court has implemented the following practices regarding payment and request for waiver of the entry fees required for panel appeals and single justice cases.

a. Payment.

1. In-person payment of cash or credit card at the Appeals Court is not necessary. Electronic payment through eFileMA.com is accepted. Payment by check through the mail is also accepted.

2. Payment of the required entry fee is deferred until after June 1, 2020. Provided the Appeals Court has received any necessary assembly of the record, the Clerk may enter an appeal or single justice case on request without payment. In a case docketed by the Clerk without an entry fee, the Clerk shall enter a notation on the docket that no entry fee has been filed. After June 1, 2020, the Court may enter an order requiring the fee to be paid by a date certain, and the failure to comply with the order will be grounds for vacating entry of the appeal or single justice case.

b. Request for waiver.

1. Except in emergency cases, in-person written requests to docket an appeal without payment supported by an affidavit of indigency will not be accepted. Requests and affidavits of indigency that are electronically filed or filed by mail will be accepted.

2. The requirement that a party provide a written request supported by an affidavit of indigency is deferred until after June 1, 2020. Provided the Appeals Court has received any necessary assembly of the record, the Clerk may enter an appeal or single justice case on request without the written request and affidavit of indigency required by Mass. R. A. P. 10(a)(1). In such cases the Clerk shall enter a notation on the docket that no affidavit of indigency has been filed. After June 1, 2020, the Court may enter an order requiring the affidavit of indigency by a certain date and may vacate entry of the appeal or case if the affidavit is not filed. Upon the filing of the affidavit of indigency, it will be treated in the ordinary course. If a party is determined not to be indigent, the Court may require a filing fee.

IV. Hearings.

a. Panel sessions. Oral arguments scheduled for the Appeals Court's May 2020 session will be conducted on the Zoom video conference platform with a live stream to the Appeals Court's YouTube channel.¹ The Clerk's Office has prepared a Guide to Zoom Oral Arguments for attorneys and self-represented litigants that may be read online or

¹ https://www.youtube.com/channel/UC5m3QM1dmvSvc42I_9tTwtw?view_as=subscriber

downloaded as a PDF.² At this time, no decision has been made for oral arguments scheduled for the Appeals Court's June 2020 session.

b. Single justice session. The single justice has discretion to determine whether to hold a hearing and the means by which any such hearing would occur, including telephonic or videoconference. Video conferences on the Zoom platform are available to the single justice.

Dated: April 28, 2020

² <https://www.mass.gov/guides/guide-on-the-use-of-video-conferencing-for-oral-argument-sessions>