

MASSACHUSETTS APPEALS COURT

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

REVISED APRIL 1, 2020

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

I. **Clerk's Office.** The Clerk's Office of the Appeals Court remains open but shall accept filings in person only in emergency matters that cannot be filed remotely. As of March 18, 2020, all Appeals Court Clerk's Office personnel are working remotely. Limited personnel are present at the John Adams Courthouse for emergency matters only. The Clerk's Office expects to continue to perform regular case management functions while experiencing minimal delays in the processing of filings or issuance of notices. For answers to general questions, please 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, the information about electronic filing at mass.gov/guides/electronic-filing-at-the-appeals-court, the status of filings at the court's docket (updated hourly) at ma-appellatecourts.org, and the court's hearing calendar at ma-appellatecourts.org/calendar.

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 Appeals Court has a drop box for paper filings located at main entrance (plaza side) of the John Adams Courthouse. An emergency filing may be made by placing it in the drop box. In person payment by cash or credit card is not necessary (fee payments may be deferred until after May 4, 2020). The drop box is monitored regularly by the Appeals Court and filings will be promptly processed.

5. In-person questions about emergency matters. If a person presents at the courthouse with questions regarding an emergency matter, the security officer at the door will notify the Appeals Court. A member of the Clerk's Office will assist the party regarding the emergency matter, preferably by telephone. At all times, social distancing protocols established by the CDC must be followed.

b. Non-emergency matters. 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. 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>.

II. **Deadlines.** The Supreme Judicial Court's April 1, 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. The due dates for filings in the Appeals Court that by operation of statute, court rule, standing order, or court order would be due between March 16, 2020 and May 4, 2020 are hereby tolled. 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 May 8, 2020.
5. Responses to show cause orders. The Appeals Court will not act on outstanding show cause orders until after May 8, 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. Paragraphs 12 and 13 of the Supreme Judicial Court's April 1, 2020 order provides for new deadlines in cases where the deadline is governed by statute, court rule, standing order, guideline, or court order.¹ Paragraph 13 provides that unless otherwise specifically ordered by the applicable court a prior deadline established by court order in a particular case is to be tolled using the same calculations as in Paragraph 12. With respect to deadlines in the Appeals Court, it is specifically ordered as follows:

1. Deadlines not governed by statute. The new due date for any deadline for filing in the Appeals Court not governed by statute (e.g., appellate brief, status report) is specifically ordered to be filed on or before May 8, 2020. The tolling calculations in the Supreme Judicial Court's April 1, 2020 order do not apply but a party may file a motion for enlargement of any particular deadline.

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 the Supreme Judicial Court's April 1, 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 the time for filing motions under Mass. R. A. P. 27 and applications under Mass. R. A. P. 27.1 has expired.

¹ Paragraph 12 provides:

Unless otherwise ordered by the applicable court, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired or will expire between March 16, 2020, and May 4, 2020, are tolled until May 4, 2020, and the new deadline in each instance is calculated as follows: determine how many days remained after March 16, 2020, until the original deadline, and that same number of days will remain as of May 4, 2020, until the new deadline. For example, if a rule set a thirty (30) day deadline and twelve (12) days remained after March 16 before that deadline was reached, then twelve (12) days will continue to remain as of May 4, before the new deadline is reached. If the thirty (30) day period commenced after March 16, then thirty (30) days remain as of May 4 before the new deadline is reached.

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 May 4, 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 May 4, 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 May 4, 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 May 4, 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. On March 18, 2020, the Appeals Court ordered that all cases scheduled for oral argument during April 2020 shall be deemed submitted on the briefs on file, without any further argument unless otherwise ordered by the Court in a particular case. At this time, the Court is moving forward with the tentative scheduling of the May session and requires responses to anticipated availability of attorneys and parties. At a later date the Appeals Court will announce the form of any arguments in May, which could include telephonic or videoconference. The court's preference is to make a record of any hearing in a medium that may be made available by electronic means.

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. The court's preference is to make a record of any hearing in a medium that may be made available by electronic means.

Dated: April 1, 2020