

**TRIAL COURT OF MASSACHUSETTS
HOUSING COURT DEPARTMENT**

THIRD AMENDED STANDING ORDER 6-20

**Continuation of Temporary Modifications to Court Operations based on the Coronavirus
(COVID-19) Pandemic and Recent Legislation affecting Summary Process Cases**

As the coronavirus pandemic subsides, and in light of the enactment of St. 2021, c. 20,¹ the Chief Justice of the Housing Court, pursuant to his statutory authority under G.L. c. 211B, § 10 and G.L. c. 185C, § 8A, hereby promulgates this Standing Order, which shall be effective July 1, 2021, except that effective immediately, any reference to the provisions of St. 2020, c. 257 in First Amended Standing Order 6-20 (dated January 15, 2021) shall be replaced by the applicable provisions of St. 2021, c. 20. Effective July 1, 2021, this Standing Order shall repeal and replace First Amended Standing Order 6-20 and Second Amended Standing Order 6-20 (dated June 17, 2021).

Where appropriate, this Order is intended to be consistent with any orders of the Supreme Judicial Court (“SJC”) and the Executive Office of the Trial Court. This Order shall remain in effect until further order of the court.

1. Court business generally. Each Housing Court division shall be open to conduct court business virtually and in person, as set forth in this Order.² In cases with one or more self-represented litigants (“SRLs”) where a court is scheduling a videoconference, divisions will recognize the possibility that SRLs may have limited access to the technology needed to conduct videoconferences or limited experience with it, and will either assist the SRL in being able to conduct a videoconference or offer an alternative to videoconferencing for the hearing. Each division shall conduct court operations in the respective division’s main location(s) and in the satellite location(s) in which there is permanent, dedicated Housing Court space.³ Each division may conduct court operations in satellite locations in which the Housing Court shares space with another court department.
2. Virtual and In-Person Court Events.
 - i. All divisions shall schedule and conduct court business and proceedings in all summary process (eviction) and non-summary process cases, including, but not limited to, in the civil and small claims case types.
 - ii. Unless the court—upon motion, request, or on its own initiative—determines otherwise,⁴ the following events shall proceed in person:

¹ There may continue to be other pandemic-related protections available in limited cases to certain litigants. *See, e.g.,* the Federal Housing Finance Agency’s Eviction Moratorium, available at fhfa.gov.

² Pleadings and other documents may be filed with the court by mail, by eFiling (where available), or in person. For information on eFiling, visit <https://www.mass.gov/guides/efiling-in-the-housing-court>. Court users may also access each division’s virtual front counters, available at <https://www.mass.gov/info-details/remotevirtual-court-services>, through which court staff will be able to answer questions and assist court users virtually.

³ For questions regarding a division’s locations, contact the respective Clerk’s Office or visit https://www.mass.gov/orgs/housing-court/locations?_page=1.

⁴ Such a motion may, for example, involve a request(s) for reasonable accommodation. *See, e.g., Adjartey v. Central Division of the Housing Court Department*, 481 Mass. 830 (2019).

- A. trials, including summary process, civil, and small claims;
 - B. proceedings where an assessment of credibility is necessary, as determined by the Clerk-Magistrate, in consultation with the respective First Justice;
 - C. motions requiring an evidentiary hearing, as determined by the Clerk-Magistrate, in consultation with the respective First Justice; and
 - D. contempt proceedings.
- iii. Unless the court—upon motion, request, or on its own initiative—determines otherwise, all motions, hearings, and court events and proceedings not identified above, including code enforcement cases and summary process (eviction) mediations, shall proceed virtually.
 - iv. The court, upon motion or request, may authorize a participant (attorney, party, or witness) to appear virtually while other participants appear in person, so long as it is consistent with the protection of constitutional rights. A participant who requests to appear virtually for an otherwise in person proceeding shall have no grounds to object to other participants appearing in person.
 - v. Subject to St. 2020, c. 257, as amended by St. 2021, c. 20, cases shall be scheduled and proceed as follows:
 - a. Cases filed on or after July 1, 2021, shall be scheduled for a virtual tier-1 event and, if necessary, an in-person tier-2 event. *See* § 3(B) below. In those cases, defaults and dismissals may enter, as appropriate, at the tier-1 event, pursuant to this Order.
 - b. Cases pending as of June 30, 2021, and in which a court event(s) has been scheduled by the court shall retain their established scheduling and method of proceeding, unless otherwise ordered by the court. In those cases, defaults and dismissals may not enter at the tier-1 event.
 - c. Cases pending as of June 30, 2021, and in which a court event has not been scheduled by the court shall proceed virtually for tier-1 events and, if necessary, in person for tier-2 events. *See* § 3(B) below. In those cases, defaults and dismissals may not enter at the tier-1 event.
3. Summary Process (Eviction) Cases.
- a. In General; New Cases; Case Entry; Scheduling.
 - i. All summary process cases shall be scheduled based on the order in which they were filed (*i.e.*, by docket number). Each Clerk-Magistrate, in consultation with the respective First Justice, shall coordinate the staggered scheduling of all matters that are to be held in person (*e.g.*, 9 a.m., 11 a.m., 2 p.m.), so as to accommodate the maximum number of cases that may be heard. Each division shall otherwise have the discretion to group cases in a manner that will promote efficiency, as determined by the Clerk-Magistrate, in consultation with the First Justice.
 - ii. Until further notice, site inspections and views conducted by the Housing Specialists Department are suspended.

- iii. Consistent with Housing Court Standing Order 1-20, all attorneys shall continue to eFile in summary process cases. While not mandatory for self-represented litigants, they are encouraged to eFile.⁵
- iv. For new summary process cases (*i.e.*, cases not yet entered), plaintiffs shall not provide a trial date on the summary process summons and complaint (“S&C”), but rather should indicate on the S&C that the trial date is “to be determined by the court” or “TBD by the court.”⁶
- v. In light of Section 1 of St. 2020, c. 257, as amended by St. 2021, c. 20, the court shall not accept for filing a summary process case for nonpayment of rent without the court-promulgated Affidavit of Compliance with Section 1(a) of Chapter 257 of the Acts of 2020 (as amended by St. 2021, c. 20), available on the court’s website.
- vi. Answers in pending and new summary process cases shall be due no later than three (3) business days before the date of the first initial tier-1 court event. An Answer that is filed in accordance with this Order shall be deemed timely, including in a pending case. An Answer that is not filed in accordance with this Order shall be left to judicial discretion and determination.

b. Two-Tier Process.

- i. All summary process cases shall be handled in a two-tier process, as outlined below.⁷
 - ii. The Clerk’s Office shall send all parties (1) a written notice of court event, informing the parties that the case has been scheduled for a date certain, along with the manner and method by which the case will be heard (*e.g.*, by videoconference); and (2) an information sheet setting forth a list of resources that may be available to assist the parties in resolving their case.⁸
- First Tier (Tier-1)
 - 1. The first scheduled court event shall be held no sooner than 14 days after the entry date. A Housing Specialist will conduct the first scheduled court event with the parties and their attorney(s), if any.

⁵ In keeping with digitization efforts, all attorneys practicing in the Housing Court are enrolled in eDelivery. eDelivery means that certain court-related correspondence and documents will be sent electronically to attorneys, rather than by paper through the mail. The court expects to soon offer eDelivery as an option for self-represented litigants. For more information on eDelivery, visit <https://www.mass.gov/info-details/learn-about-edelivery-in-the-trial-court>.

⁶ A modified summary process summons and complaint (S&C), which reflects certain changes in procedure relative to new case filings, has been promulgated by the court for temporary use. Prior versions of the S&C may continue to be used, subject to the requirements of this Order. Court users are encouraged to exchange prior versions of the S&C with the newly modified one, free of charge. Plaintiffs shall not name any minors as defendants in a summary process case. *See* St. 2020, c. 358.

⁷ A brief video about summary process (eviction) cases is available (with subtitles in English and Spanish) at <https://www.mass.gov/info-details/housing-court-call-of-the-list-speech>. The foregoing also includes general information about summary process (eviction) cases, which information is available in multiple languages.

⁸ Information as to certain resources available by division for landlords and tenants will be available on the court’s website at <https://www.mass.gov/guides/housing-court-resources>. To promote upstreaming, the court encourages plaintiffs to explore any such options in the first instance before the filing of a summary process action.

2. The purpose of the first scheduled court event will be for the parties, with the assistance of a Housing Specialist, to determine the “status” of the case, explore the availability of assistance with housing costs and other available resources and programs (*e.g.*, Lawyer for the Day Program, Tenancy Preservation Program, etc.), and attempt a mediation to reach a resolution to the case.
 3. In attempting to resolve their case, the parties may agree in writing to (1) continue the matter for specific purposes (*e.g.*, to pursue rental or other monetary assistance such as RAFT, ERAP, and ERMA)⁹; and (2) return to court on an agreed-upon date for a continuation of the first-tier court event.
 4. If the parties do not agree to a continuance, a party may request a continuance by motion. Notwithstanding its equitable authority, pursuant to Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, the court “shall grant a continuance for a period as the court may deem just and reasonable if” the court determines that the criteria enumerated in the statute are met.
 5. Pursuant to Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, no judgment may enter, nor may any execution issue, in a summary process action for nonpayment of rent if there is a pending application for rental assistance. While parties may enter into an agreement for judgment in such an action, the agreement shall include language that entry of judgment and enforcement of the agreement is subject to St. 2020, c. 257, as amended by St. 2021, c. 20.
 6. Subject to any continuance required by Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, in a case in which there is no settlement and a trial must be scheduled, the Clerk or designee will work with the Housing Specialist to establish the next available trial date and identify the next steps in preparing the case for trial (*e.g.*, scheduling motions, establishing discovery and other necessary deadlines, etc.).
 7. Subject to Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, defaults and dismissals may enter, as appropriate, if a party does not (or if both parties do not) appear after notice.
- Second Tier (Tier-2)
 1. For cases which do not resolve in mediation, the Clerk’s Office shall send a written notice of the trial date. Such notice of the trial date need not include the information sheet that will accompany a notice of first-tier court event.
 2. Subject to any continuance required by Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, trials should be held as soon as practical, but no sooner than 14 days after the tier-1 event. Despite any required continuance under the statute, the court may schedule a hearing on any meritorious counterclaim brought in the case, at the discretion of the Clerk-Magistrate, in consultation with the respective First Justice.
 3. Subject to Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, defaults and dismissal may enter, as appropriate, if a party does not (or if both parties do not) appear after notice.

⁹ If the parties seek to enforce certain obligations relative to such monetary assistance, such matters may be brought to the court’s attention for resolution.

c. Executions for Possession in Summary Process (Eviction) Cases.

- i. If an execution was tolled and the 90-day expiration date on the execution has passed, a plaintiff may file a written request or motion for a new execution. Upon such a request or motion, the Clerk’s Office shall issue a new execution for the statutory 90-day period. Such executions shall be issued administratively (without a hearing) under the same terms as the original execution based on the original judgment. If a landlord seeks an execution for a different amount of money damages, the landlord shall file and serve a motion to amend the underlying judgment. The Clerk’s Office shall schedule such motion and any opposition for hearing.
 - ii. Pursuant to Section 2(b) of St. 2020, c. 257, as amended by St. 2021, c. 20, a court shall stay an execution if the court determines that the criteria enumerated in the statute are met.
 - iii. Subject to the statutory 90-day period, executions for possession that were subject to the Centers for Disease Control and Prevention (“CDC Order”) may be levied upon after the CDC Order expires.
 - iv. Until the CDC Order is no longer in effect, at the time of a written request or motion for issuance of an execution in a summary process action that includes a claim for nonpayment of rent, the plaintiff shall file the “First Amended Plaintiff’s Affidavit Concerning CDC Order,” indicating whether the plaintiff has received from the tenant a declaration under the CDC Order. The affidavit, as amended and promulgated by the court, will be available on the court’s website.
4. Jury Trials. Jury trials shall resume in accordance with any guidance and procedures established by the SJC and the Executive Office of the Trial Court.

SO ORDERED.

/s/ Timothy F. Sullivan
Timothy F. Sullivan, Chief Justice

Last Updated: June 29, 2021
Effective: July 1, 2021 (*See Preamble*)