

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Xuyen Truong, Nga Nguyen,
People's Nails & Spa, LLC, Nails for U, LLC,
and Creative Nails & Spa, LLC,¹**
Petitioners,

Docket No.: LB-26-0135

Dated: April 28, 2026

v.

**Office of the Attorney General, Fair Labor
Division,**
Respondent.

**MEMORANDUM AND ORDER ALLOWING
MOTION TO DISMISS**

This is an appeal from ten civil citations issued to the five petitioners by the Office of the Attorney General, Fair Labor Division (division). The division has filed a motion to dismiss for lack of jurisdiction, which the petitioners have opposed. *See* 801 C.M.R. § 1.01(7)(g)(3).

I. Background

The briefs and exhibits disclose the following undisputed facts. *See generally Cepeda v. Kass*, 62 Mass. App. Ct. 732, 737 (2004). The two individual petitioners (individuals) own the three corporate petitioners. The various petitioners contracted with accountants at Phamdo & Associates (accountants) for accounting services.

In April 2020, the division prepared a payroll demand addressed to one of the corporate petitioners and the two individuals. An investigator apparently had been in contact with the accountants; she wrote to them, "Please let me know if you will be representing the company

¹ The caption is hereby amended to conform to the pleadings.

[and the individuals].” One of the accountants responded, “We will be representing the client for this audit.”

In January 2024, the division prepared a new payroll demand, this time addressed to the three corporate petitioners. An investigator emailed the demand to the accountants. The accountants eventually sent responsive documents to the division on an electronic platform.

In February 2026, an attorney for the division contacted the accountants again by email, stating: “We are . . . preparing to issue citations. I wish to confirm that you wish to receive the citations on behalf of your clients? If this is not the case . . . we are happy to mail the citations directly to them.” One of the accountants responded: “Yes, please send any citations to our office, we are still engaged to handle all of this client’s matters.” The division emailed the citations to the accountants one week later, on February 11, 2026.

Forty days after that, on March 23, 2026, the petitioners lodged this appeal. Their electronic notice of appeal stated, in part: “Upon receipt of the citations on 02/11/2026, [one of the accountants] responded . . . asking for proof [The division] did not respond Appeal is unintentionally being filed late.”

II. Analysis

The division is authorized punish violations of various statutes through civil citations. G.L. c. 149, §§ 27C(b), 148C(l). The employer-recipient may appeal by “filing a notice of appeal . . . within ten days of the receipt of the citation.” § 27C(b)(4). The filing deadline is jurisdictional, meaning that late-filed appeals always must be dismissed. *See Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020); *Idea Painting, Inc. v. Attorney Gen.*, No.

2384CV02952, 2024 WL 4217947, at *5 (Suffolk Super. Sept. 03, 2024); *Andino v. Attorney Gen.*, No. LB-21-572, 2022 WL 9619031, at *1 (Div. Admin. Law App. Jan. 21, 2022).

It is the petitioners' burden to prove that the appeal was timely. This burden flows from at least two sources. In all or almost all civil cases, "[t]he burden is on the party asserting jurisdiction to prove jurisdictional facts." *Miller v. Miller*, 448 Mass. 320, 325 (2007). See *Abate v. Fremont Inv. & Loan*, 470 Mass. 821, 829-31 (2015). And in appeals from the division's citations, it is the petitioner-employer who must "demonstrate[] . . . that the citation . . . was erroneously issued." G.L. c. 149, § 27C(b)(4).

The theory of the petitioners' brief is that the accountants were not a "designated agent for service of process." The theory's implicit premise is that the division was obligated to deliver the citations in accordance with the traditional rules about service of process in the courts. Under those rules, it is possible that the petitioners' theory would have legs. See Mass. R. Civ. P. 4(d)(1)-(2); *Fergus v. Ross*, 477 Mass. 563, 567 (2017); *Beaver Brook Farms v. Towers Realty Invs., Inc.*, 1999 Mass. App. Div. 124, 1999 WL 788614, at *2 (Dist. Ct. 1999).

The key problem for the petitioners is that the traditional service-of-process rules are inapplicable. The statutory ten-day deadline is triggered not by "service upon [a party]," Mass. R. Civ. P. 12(a)(1), but by a petitioner's "receipt of the citation," G.L. c. 149, § 27C(b)(4). "Receipt" is a flexible concept. It may be accomplished through non-traditional methods of delivery. See *Mr. Home, Inc. v. Attorney Gen.*, No. LB-24-511, 2024 WL 4527809, at *1 (Div. Admin. Law App. Oct. 8, 2024); *Brown v. Nikloads, LLC*, 505 F. Supp. 3d 620, 625 (E.D. Va. 2020). Delivery to an agent not specifically appointed to accept service may well qualify. See *Jamrog v. H.L. Handy Co.*, 284 Mass. 195, 199-200 (1933). A flexible implementation of the "receipt" rule

comports with the law’s functional and informal approach to notice-related issues in administrative proceedings. *See Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-77 (1985). *See also Cassouto-Noff & Co. v. Diamond*, 487 Mass. 833, 835-36 (2021).

With these principles in mind, the petitioners do not make out a prima facie jurisdictional case. *See Cepeda*, 62 Mass. App. Ct. at 737. Their papers do not state or reveal the date on which they themselves received or learned of the citations. The petitioners also offer no details about the scope of the “matter[s] over which [the accountants’] authority extend[ed].” *Jamrog*, 284 Mass. at 199. And the notice of appeal itself acknowledged that the appeal was “filed late,” attributing the lateness to the division’s unresponsiveness. In these circumstances, there is no need to address any open, jurisdiction-related factual questions at a hearing. *Cepeda*, 62 Mass. App. Ct. at 737.

III. Order

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals