



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued June 23, 2015

Massachusetts Appeals Court

For the period July 1, 2013 through December 31, 2014





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June 23, 2015

Chief Justice Phillip Rapoza
Massachusetts Appeals Court
John Adams Courthouse
1 Pemberton Square, Suite 3500
Boston, MA 02108

Dear Chief Justice Rapoza:

I am pleased to provide this performance audit of the Massachusetts Appeals Court. This report details the audit objectives, scope, and methodology for the audit period, July 1, 2013 through December 31, 2014. My audit staff discussed the contents of this report with management of the court, whose comments are reflected in this report.

I would also like to express my appreciation to the Massachusetts Appeals Court for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue horizontal line.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

This report considers whether, during our audit period of July 1, 2013 through December 31, 2014, the Massachusetts Appeals Court's case-management system was operating effectively; appeals were managed, heard, and decided in a timely manner; and appeal entry fees were properly waived in accordance with applicable requirements.

The Appeals Court was established to help the Supreme Judicial Court manage the large volume of appeals arising from increased litigation. The Appeals Court hears cases from the Trial Court system and from various administrative boards and commissions. It presides over cases of public importance, and its decisions can have significant and lasting consequences. All of the court's revenue is remitted to the Commonwealth's General Fund.

Based on our audit, we determined that the Appeals Court's case-management system was operating effectively; appeals were managed, heard, and decided in a timely manner; and fees were waived in accordance with applicable requirements.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Appeals Court was created in 1972 under Chapter 740 of the Acts of 1972, which established Chapter 211A of the Massachusetts General Laws. It was established to help the Supreme Judicial Court (SJC) manage the large volume of appeals arising from increased litigation. Its jurisdiction includes civil and criminal cases appealed from the judgments of the Massachusetts Trial Courts, the Department of Industrial Accidents, the Appellate Tax Board, and the Department of Labor Relations. It does not hear appeals involving first-degree murder convictions; those go directly to the SJC for consideration. If it so decides, the SJC may assign the Appeals Court appeals from its caseload.

The Appeals Court's original legislation created positions for a chief justice and five associate justices to preside over the appellate process. In response to increased caseloads caused in part by changes in the rules of civil procedure (1974) and the elimination of the trial de novo¹ system for criminal cases in the district courts and Boston Municipal Court (1994), the Legislature increased the number of sitting justices to 10 in 1978, 14 in 1990, and 25 in 2000. During our audit period, there were 24 sitting justices, and the Appeals Court used the services of one retired justice on a recall basis. In addition to the justices, the court had 90 full-time employees who worked in other offices, such as the Legal Department, the Clerk's Office, and the Fiscal Office. The Court's information-technology needs are served by the Judicial Information Services Department, which has 60 employees and serves the entire Massachusetts court system.

Three-judge panels hear the majority of appeals; the composition of the panels changes regularly so that each judge has the opportunity to sit with the other judges. In addition to its "panel jurisdiction," the Appeals Court also runs a continuous "single justice" session with a separate docket. The single justice may review interlocutory orders² and orders for injunctive relief³ issued by certain Trial Court departments, as well as requests for review of certain attorney-fee awards, motions for stay⁴ of civil proceedings or criminal sentences pending appeal, and motions to review impoundment orders. Each associate justice sits as this single justice for a month at a time. The Appeals Court holds hearings from

1. A new trial, in contrast to an appeal of a previous verdict.

2. An order issued during litigation to provide a temporary decision on an issue related to an action. Because interlocutory orders are not final, they are not often appealed.

3. Court orders, granted in response to petitions, that compel or prohibit an act or condition but are not judgments for money.

4. Requests to a court that a proceeding be stopped temporarily.

September through June, mostly at the John Adams Courthouse in Boston, and also sits 5 to 10 times per year in other locations throughout the Commonwealth.

The SJC, with the agreement of the Appeals Court, issued the “Order Regarding Time within Which Cases May Be Determined by the Appellate Courts” to provide overall time standards for all appellate courts in Massachusetts. The standards, which are quoted below, were established as administrative goals rather than mandatory requirements.

1. *Oral argument, or the decision conference in cases not orally argued, should be held promptly after the appellee’s brief is filed or should have been filed. Cases in which the appellee’s brief is filed on or before February 1 should be heard or made the subject of a decision conference during that court year. (September 1 through August 31.)*
2. *Cases should be decided within 130 days after argument or after submission without argument.*

People entering appeals at the Appeals Court are required to pay entry fees (generally \$300 or \$315) that are fixed by law. Filing fees (including entry fees) are not required for criminal cases, appeals by the Commonwealth, or housing authorities’ appeals of lower-court eviction decisions. Waivers of entry fees may be granted to indigent appellants pursuant to a motion. Appellants must file an affidavit of indigency with the motion for waiver. Although supporting documents are not required with the initial motion, the affidavit is extensive and is signed under the penalties of perjury. If an affidavit does not appear to be regular and complete on its face, a hearing before a justice is held and additional documents may be required. During our audit period, July 1, 2013 through December 31, 2014, the Appeals Court collected fees totaling \$552,705, which were transmitted to the Office of the State Treasurer as General Fund revenue.

In fiscal year 2014, the Appeals Court was appropriated \$12,096,000, of which it expended \$12,046,000. In fiscal year 2015, the court was appropriated \$12,626,000, of which it had expended \$6,149,613 as of December 31, 2014.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Appeals Court for the period July 1, 2013 through December 31, 2014.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

| Objective | Conclusion |
|---|------------|
| 1. Is the case-management system operating effectively, and are appeals managed, heard, and decided in a timely manner? | Yes |
| 2. Are entry fees being properly waived in accordance with applicable requirements? | Yes |

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed the following procedures:

- We interviewed Appeals Court personnel to obtain an understanding of the general control environment during our audit period as well as controls specifically related to our audit objectives.
- We reviewed our prior audit report (2009-1101-30) to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
- We reviewed the court's internal control plan, as well as other documents related to our objectives, and examined relevant internal control activities. In addition, we obtained and reviewed applicable statutes, rules of appellate procedures and practice, rules of the Appeals Court, and relevant judicial standing orders.
- We reviewed the Supreme Judicial Court's (SJC's) "Order Regarding Time within Which Cases May Be Determined by the Appellate Courts" (Appendix) and conducted interviews with Appeals Court personnel to gain an understanding of the case-management process.

- We selected transactions using a random sample of 48 cases out of a total population of 2,037 decided cases from our audit period and tested these cases to determine whether this SJC order had been complied with.
- For our review of fee waivers granted, we selected a random, non-statistical sample of 40 cases out of 501 that had entries related to entry-fee waivers. We then determined whether the waivers had been appropriately processed and documented.

The data we obtained from the Massachusetts Management Accounting and Reporting System about the Appeals Court's activities during our audit period were not used in our audit testing but were reconciled to information received from the court. Information obtained from Paragon, the court's case-management system, was supported by source documentation. We interviewed court IT personnel; were shown how information is entered and accessed in the system; and compared docket entries with analogous hardcopy documents and found them to be consistent. From this analysis, we concluded that the data were sufficiently reliable for testing.

APPENDIX

Supreme Judicial Court Order Regarding Time within Which Cases May Be Determined by the Appellate Courts

WHEREAS the Chief Justice and the Justices of the Supreme Judicial Court recognize the necessity for reasonably expeditious disposition of appealed cases, and appreciate the Court's duty of public accountability in this matter; and

WHEREAS the Justices of the Appeals Court have expressed their agreement with those views by adopting today such portions of this order as relate to the Appeals Court,

Now therefore it is ORDERED:

The following standards are adopted as administrative goals establishing a time within which cases can be expected to be determined by the appellate courts of Massachusetts. Variation from the 130-day standard set out in paragraph 2 should be permitted by vote of the quorum when necessary to accommodate special problems in individual cases. Docket entries will be made as to any such action.

- 1. Oral argument, or the decision conference in cases not orally argued, should be held promptly after the appellee's brief is filed or should have been filed. Cases in which the appellee's brief is due on or before February 1 should be heard or made the subject of a decision conference during that court year. (Court year: September 1 through August 31.)*
- 2. Cases should be decided within 130 days after argument or after submission without argument.*
- 3. Paragraphs one and two shall be applicable in the Supreme Judicial Court forthwith, and paragraph two shall be applicable in the Appeals Court for all cases argued or submitted for decision after the date of this order. Paragraph one shall be applicable in the Appeals Court as soon as possible after the additional justices authorized by St. 1978, c. 478 § 104, have assumed their duties, with a tentative goal of full applicability not later than the close of the 1979–1980 court year.*