

## ATTORNEYS

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## PRACTICES

Litigation

# Client Alert: Massachusetts State Court Civil Case Management Impacts of COVID-19

By Roger L. Smerage on March 18, 2020



Before the spread of COVID-19 last week, the Massachusetts court system—which consists of the Supreme Judicial Court (“SJC”), the Appeals Court, and the Trial Court (itself comprised of the Superior Court, District Court, Land Court, and Housing Court, among others)—was already stretched thin. For example, it is typical in many Superior Court civil sessions to wait six months or more for a motion hearing. The spread of COVID-19, however, has in many respects brought the Massachusetts court system to a standstill in civil cases.

In fact, all Massachusetts state courts will remain closed for civil business until at least April 6, 2020, except for in-person emergency proceedings and non-emergency proceedings that can be conducted remotely. (This article does not address the impact of COVID-19 on criminal matters in the Massachusetts courts.)

On March 13, 2020, the SJC announced that no new juries would be empaneled beginning Monday, March 16, 2020, for a period of five weeks. Then, on March 15, 2020, the Trial Court announced a complete closure for a period of 48 hours, even for cases in the middle of a jury trial. On March 17, 2020, the SJC issued a further order setting out the guidelines and rules governing civil proceedings at all levels of the Massachusetts court system beginning on March 18, 2020 and continuing through at least April 21, 2020. Subsequently, each of the individual court departments issued a corresponding standing order, with a universal directive for parties who previously had proceedings scheduled to occur on or before April 6, 2020 to contact the respective clerk’s office to determine the status of individual proceedings. Although certain gaps remain to be filled in, the orders issued so far so provide some insight as to how COVID-19 and resulting closures will impact case management for civil matters pending in Massachusetts courts.

**Trial Court – General.** From March 18, 2020 until at least April 6, 2020, no civil matters in any Massachusetts court will have proceedings conducted in person, except for “emergency matters that cannot be resolved through a videoconference or telephonic hearing, either because such a hearing is not practicable or because it would be inconsistent with the protection of constitutional rights.” To the extent feasible, Massachusetts courts will conduct civil matters through telephone, videoconferencing, email, or other comparable means during this time. With the exception of the Land Court, clerk’s offices will remain open only for the purposes of accepting emergency filings that cannot be submitted electronically and certain applications pursuant to the SJC’s standing order. This means that unless an initial case filing can be submitted electronically (which can be done in all District Courts but only some Superior Courts), no non-emergency initial case filings will be permitted before April 6, 2020.

**Superior Court – Trials.** For the most part, civil cases in all departments of the Trial Court that are scheduled to proceed to a trial—jury or jury-waived—on or before April 17, 2020 will receive a new trial date that is no earlier than April 21, 2020. Jury-waived trials that can be conducted

through alternative means by agreement of the parties and the court may proceed as scheduled. A party whose trial or evidentiary hearing is postponed may apply for an exception if exceptional circumstances can be shown, but such exception will only be granted if approved by the session judge, the chief justice of the individual court department, and if appropriate, the jury commissioner. Civil cases currently in the midst of a jury trial have been declared to have resulted in mistrial, with a new trial to be scheduled. Whether continued cases will get priority over other cases scheduled to go trial in late April and May—in which case all cases will likely see their trial dates pushed back—or if these cases will be interspersed with the existing trial calendar remains to be seen. The parties in any impacted case may request a telephonic or video conference with the court to address matters arising from trial postponements. In addition to trial continuances, unless a court orders otherwise, any deadline set by statute, court rule, standing order, or other guideline that would expire before April 21, 2020 is extended to that date.

**Superior Court – Non-Trial Proceedings.** For all matters in Superior Court scheduled for non-trial proceedings through April 6, 2020, the court will allow in-person appearances only if the session judge, after consulting the clerk’s office, court security, and the parties, determines that the proceedings cannot be resolved through telephonic or video conference because it is not practicable or would contravene constitutional rights. The Superior Court standing order does not address whether requests for other continuances—such as extensions of tracking orders to allow for more time to conduct depositions, mediations, or other out-of-court proceedings that typically require the gathering of persons in one location—will be considered.

**District Court.** Other than certain quasi-criminal civil matters (such as applications for abuse or harassment prevention orders and civil commitments proceedings), all civil matters in District Court that were scheduled for an in-court event between March 18, 2020 and May 1, 2020 are continued to a date that is at least 60 days out.

**Land Court.** All Land Court trials and evidentiary hearings scheduled to occur on or before April 6, 2020 have been continued to a date to be determined by the court. All other proceedings scheduled to occur on or before April 6, 2020 will be conducted by telephone conference call. A party may file a motion to conduct a hearing in-person for an emergency matter, but the applicant must demonstrate extraordinary circumstances and that the hearing can take place in a way that reduces the health risks to the parties, their counsel, and the court. Additionally, all Land Court case management deadlines scheduled to occur on or before April 6, 2020 have been continued to that date. Unlike other departments of the Trial Court, the Land Court will continue to accept routine filings (including initial case filings), but only by mail or equivalent delivery service, or through e-filing where acceptable.

**Summary Process Actions.** All summary process cases pending in the Housing Court are continued until at least April 21, 2020, provided that a party may seek to advance a summary process case event—but no earlier than April 6, 2020—by motion showing good cause. Agreements reached outside of court to resolve summary process cases are to be submitted to the court through e-filing or first-class mail, rather than presented in person. Any default judgments entered in Housing Court proceedings between March 1, 2020 and April 21, 2020 “shall” be vacated upon motion.

**Appeals Court.** Cases scheduled for oral argument before the Appeals Court during March 2020 will proceed with argument conducted telephonically. Alternatively, parties in such cases may elect to submit their argument relying on their written briefs. To date, the Appeals Court has not decided how to handle cases scheduled for oral argument during April 2020.

In addition to scheduling issues, the SJC’s March 17, 2020 order addresses other impacts of the COVID-

19 situation. First, the SJC has ordered that all statutes of limitations be tolled until April 21, 2020. Second, all orders issued as a result of an adversarial hearing or the opportunity for such hearing that would expire prior to April 21, 2020, remain in effect until further hearing.

Given these orders, it is clear that the Massachusetts court system is taking the risks associated with COVID-19 seriously. Of course, the practical realities of how civil litigation case management will be impacted by this unprecedented situation will not be known until April 6, 2020 at the earliest, when the courts are scheduled to re-open for non-emergency civil business. As the COVID-19 situation is constantly fluctuating, the Massachusetts court system may issue additional orders in the coming days and weeks which could prolong this period of uncertainty. Clients with pending litigation matters should be prepared to be flexible as Massachusetts courts decide how to triage civil matters and respond to case schedule delays and hearing backlogs.

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