EMERGENCY ALERTS

Coronavirus Update

COVID-19 Vaccine: Safe, effective, free. Get the vaccine today: *Jun. 2nd, 2021, 9:25 am* Read more

COVID-19 Updates and Information: All restrictions lifted effective May 29 *Jun. 3rd, 2021, 12:01 am* Read more

HIDE ALERTS

Mass.gov

SUPREME JUDICIAL COURT RULES

Order in re: COVID-19 (coronavirus) pandemic

Supreme Judicial Court Order concerning email service in cases under Rule 5(b) of Mass. Rules of Civil Procedure

ADOPTED DATE:

03/30/2020

EFFECTIVE DATE:

03/30/2020

UPDATES:

Added effective March 30, 2020 (https://www.mass.gov/media/2114201/download)

(On Attorneys of Record Only, Unless Self-Represented Party Consents)

TABLE OF CONTENTS

Order (#order)

Downloads (#downloads)

()

Order

In light of the public health concerns regarding the COVID-19 (coronavirus) pandemic and the actions ordered by the Governor in connection therewith, the Supreme Judicial Court, pursuant to its superintendence and rule making authority, issues the following ORDER to protect the public health by reducing the risk of exposure to the virus and slow the spread of the disease.

WHEREAS, Rule 5(b) of the Massachusetts Rules of Civil Procedure provides that, except as provided under other rules,[1] service of pleadings and other papers upon an attorney representing a party ("attorney of record") or a party not represented by an attorney ("self-represented party"), shall be made by delivering a copy to the attorney of record or self-represented party, or by mailing it to their last known address, or, if no address is known, by leaving it with the clerk of the court;

WHEREAS, the act of serving pleadings and other papers on an attorney of record or self-represented party pursuant to the methods required by Rule 5(b) can expose attorneys, parties, postal service and other delivery personnel, and others to the risk of exposure if any of them have contracted or been exposed to the coronavirus. And, service at a law office may not be an effective way to receive pleadings and other papers if attorneys are working from home during this emergency.

NOW THEREFORE, the Supreme Judicial Court hereby ORDERS that effective March 30, 2020, and until further order of the court:

1. Where the email address of an attorney of record is known because it was previously provided by the attorney on pleadings or other papers filed with the court in connection with the case at issue, pleadings and other papers may be served upon the attorney of record under Mass. R. Civil P. 5(b) by email sent to the email address provided.
2. If, for any reason, an attorney of record cannot be served at an email address previously provided or if an attorney of record, for whatever reason, has not previously provided an email address,[2] the attorney of record shall promptly communicate that to all other attorneys of record and self-represented parties and provide an active email address.
3. Service by email is complete upon hitting "send" or its equivalent, unless the person making service receives notice or otherwise reasonably should be aware that the email was not successfully transmitted. Attorneys must periodically check their "spam," "quarantine," or equivalent folders to ensure that a party's email is not being blocked or diverted to those folders.
4. Whenever parties have the right or are required to do some act or initiate a proceeding within a prescribed period after the service of pleadings or other papers upon them and the pleadings or other papers are served upon them by email, three (3) days shall be added to the prescribed period.
5. All attorneys of record shall cooperate in the exchange of pleadings and other papers by email to accomplish the purpose of this order.[3]
6. Pleadings and other documents may not be served by email upon a self-represented party, unless that self-represented party consents in writing, which may be by email, in which case the self-represented party shall be subject to the same obligations and restrictions as an attorney of record under this order.

7. Service of pleadings and other papers by email upon an incarcerated self-represented party is not authorized by this order under any circumstances.
8. If applicable, parties should note on their filings "served via email."
9. If the pleadings or other papers to be served by a party include an affidavit signed under the penalties of perjury, but the party making service has been unable to secure the affiant's original handwritten signature, or a scanned or photographed copy thereof, due to constraints arising from the coronavirus pandemic, the affidavit may still be served and subsequently filed with the court if the affiant has signed the affidavit electronically. The party making service shall thereafter take steps to secure the affidavit bearing the affiant's original handwritten signature as soon as practicable.
10. Any party who claims that the party did not receive pleadings or other papers that allegedly were served by email may move for relief from any ruling, entry of default, or other adverse action that arose from the allegedly defective service.
11. Where proceedings are not governed by Mass. R. Civ. P. 5(b), a Trial Court department may by order authorize e-mail service as appropriate.

This Order shall be effective on March 30, 2020, and remain in effect until further order of the court.

Downloads

Supreme Judicial Court Order concerning email service in cases under Rule 5(b) of Mass. Rules of Civil Procedure

(https://www.mass.gov/doc/supreme-judicial-court-order-concerning-email-service-in-cases-under-rule-5b-of-mass-rules-of/download)

(PDF 307.57 KB)

---

[1] Other rules addressing service include, but are not limited to, Mass. R. Civ. P. 4 (summons and complaint), 4.1 (attachment), 4.2 (trustee process), 14 (third-party complaint), 45 (subpoenas), and 65.3 (proceedings for civil contempt). Service under these rules is not covered or affected by this order.

[2] All attorneys licensed to practice in Massachusetts are required to provide the Board of Bar Overseers annually with a business email address, see Supreme Judicial Court Rule 4.02, and to provide it on every pleading filed in a case. See Mass. R. Civ. P. 11. Self-represented parties are required to provide an email address, if they have one. Id. Clerks are also authorized to serve notice of orders and judgments on attorneys of record and self-represented parties by email. See Mass. R. Civ. P. 77(d)(2).

[3] Nothing in this order shall prevent parties from agreeing in writing to make and receive service of pleadings and other papers by email.

UPDATES:

Added effective March 30, 2020 (https://www.mass.gov/media/2114201/download)

RELATED

Court system response to COVID-19 (/resource/court-system-response-to-covid-19)

Civil Procedure Rule 5: Service and filing of pleadings and other papers

(/rules-of-civil-procedure/civil-procedure-rule-5-service-and-filing-of-pleadings-and-other-papers)