MASSACHUSETTS APPEALS COURT

Administrative Order 20-3

Procedures Governing Certain COVID-19 Custody Matters

I. Introduction. This Administrative Order is entered in response to the Supreme Judicial Court's order dated June 3, 2020, effective June 8, 2020, titled "Order Regarding Transfer of Certain Single Justice Matters During the COVID-19 Pandemic" ("SJC Order") and the Appeals Court's continued response to the COVID-19 pandemic. This Administrative Order explains the mechanics and procedures governing petitions and any other matters transferred under the SJC Order, for Mass. R. A. P. 6(b) motions seeking stays of execution of sentence, and for appeals of single justices' orders relating to motions seeking stays of execution of sentence under Mass. R. A. P. 6(b).

II. Transferred Petitions.

1. Entry of Transferred Petitions. The SJC Order provides that the Supreme Judicial Court and its single justices may transfer to the Appeals Court for resolution by Appeals Court single justices certain matters including "petitions for review of bail orders, bail revocation orders, pretrial detention orders based on dangerousness, and detention orders pending probation violation proceedings." Upon receipt of an order of transfer from the Supreme Judicial Court, the Appeals Court will enter the case and assign a new docket number on the Appeals Court's single justice ("J") docket. The Appeals Court will transfer a copy of all documents that were filed with the Supreme Judicial Court. Upon the entry of a transferred matter, the Appeals Court will send notice of entry to all counsel of record and any self-represented litigant.

2. Subsequent Filings.

a. Supplemental Filings and Responses Ordered by the Appeals Court or Single Justice. The Appeals Court or a single justice may require the petitioner to supplement the petition by providing additional record material, documentation, or legal briefing, and may request a response or other materials from the respondent. All subsequent filings shall reference the Appeals Court docket number.

b. Deadlines. Deadlines for these subsequent filings will be expedited and are not suspended by Appeals Court Administrative Order 20-2 or any similar order.

c. Electronic Filing. Subsequent filings from all parties shall be electronically filed at eFileMA.com. Impounded filings and filings from self-represented litigants are strongly encouraged to be electronically filed but may also be filed by mail. The Appeals Court Clerk and Assistant Clerks also have the discretion to permit filings by email.

3. Hearing. The single justice has the discretion to schedule a hearing.

4. Order or Report. The single justice will decide the petition in an "order" consistent with practice in other case types on the Appeals Court's single justice docket. The single justice's order will not be captioned as a "judgment" as is the practice in the single justice session of the Supreme Judicial Court. Notwithstanding, the Appeals Court single justice's decision is appealable as is provided in paragraph (II)(5) of this Administrative Order. Alternatively, the single justice may report the petition to a panel of the Appeals Court or back to the Supreme Judicial Court as is provided by Paragraph 9 of the SJC Order and applicable law.

5. Appeal of Single Justice's Order on Petition Transferred by the Supreme Judicial Court.

a. Notice of Appeal. The single justice's order may be appealed to a panel of the Appeals Court pursuant to Paragraph 8 of the SJC order and Appeals Court Rule 2:01 by filing a notice of appeal in the Appeals Court. Any notice of appeal must be filed within 7 days of entry of the order.

b. Entry of Appeal. Upon the filing of a notice of appeal, the court will automatically enter a new case on the Appeals Court's panel ("P") docket without the payment of an entry fee.

c. Expedited Procedures. The court will enter an order expediting the appeal, assigning it to a panel, and providing that the appeal will be decided solely on the record before the single justice with no further briefing or oral argument, unless the panel later determines otherwise.

d. S.J.C. Rule 2:21 Memorandum. No memorandum explaining "why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means" as is required by S.J.C. Rule 2:21(2) is necessary and should not be filed.

III. Motions to Stay Execution of Sentence Under Mass. R. A. P. 6(b).

1. Applicable Procedures. Paragraph 4 of the SJC Order provides:

> Pursuant to Mass. R. Crim. P. 31 and Mass. R. A. P. 6 (b), motions to stay executions of sentences should ordinarily be sought in the first instance in the trial court, and may thereafter be sought from a single justice of the appellate court to which the appeal is being taken. Any party aggrieved by an order of the single justice may then appeal to the appellate court in which the appeal is pending, and the order of the appellate court shall be final. Nothing in Christie v. Commonwealth or Committee for Public Counsel Servs. v. Chief Justice of the Trial Court authorizes parties to depart from these established procedures, and therefore the procedures shall continue to apply notwithstanding the pandemic.

2. Filing to the Single Justice.

a. Standing Order. The motion filed to the single justice shall comply with the Appeals Court Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R. A. P. 6 (which after July 1,

2020, will be known as M.A.C. Rule 6.0). The requirement stated in Mass. R. A. P. 6(b)(1) that the motion be filed first in the trial court unless doing so is not practicable remains in effect.

b. Payment/Waiver of Fee. To avoid the transmission of COVID-19, the Clerk may continue to defer payment or request for waiver where such payment cannot be accomplished through eFileMA.com or by mail as was provided in Administrative Order 20-1 pending further order of the court.

c. Response. If the single justice determines a response is necessary, the single justice will order a response by a specific date, which is not suspended by Appeals Court Administrative Order 20-2 or any similar order.

3. Appeal of Single Justice's Order.

a. Notice of Appeal. An order of the Appeals Court single justice on a motion for a stay of execution of sentence under Mass. R. A. P. 6(b) may be appealed by filing a notice of appeal in the Appeals Court. Any notice of appeal must be filed within 30 days of entry of the order.

b. Entry of Appeal. Upon the filing of a notice of appeal, the court will automatically enter a new case on the Appeals Court's panel ("P") docket without the payment of an entry fee.

c. Expedited Procedures. Provided the single justice's order under Mass. R. A. P. 6(b) was related to COVID-19, the court will enter an order expediting the appeal, assigning it to a panel, and providing that the appeal will be decided solely on the record before the single justice with no further briefing or oral argument, unless the panel later determines otherwise.

IV. Reliance on Special Master's Reports. In deciding any matter related to release of any person from custody during the COVID-19 pandemic, including matters originally filed with the Appeals Court or transferred to the Appeals Court by the Supreme Judicial Court, the Appeals Court and its single justices may rely on reports of the Special Master appointed by the Supreme Judicial Court in Committee for Public Counsel Servs. v. Chief Justice of the Trial Court related to statistics concerning inmate populations, COVID-19 testing and positive test results, and the number of persons released. The reports of the Special Master are available at https://www.mass.gov/service-details/committee-for-public-counsel-services-v-chief-justice-of-the-trial-court-sjc-12926. This does not preclude the parties from providing their own data regarding these statistics or the court or single justice from requesting additional statistics from any party as is necessary.

By the Court, Mark V. Green, Chief Justice

/s/ Joseph F. Stanton

Clerk

Entered: June 8, 2020