

Notices from the Courts

Superior Court issues amended Standing Order No. 1-88

THIRD AMENDED STANDING ORDER 1-88

TIME STANDARDS

Applicable to all Counties

A. GENERAL CONSIDERATIONS

Responding to and complying with the directive of the Supreme Judicial Court for "... an attack on excessive delay and excessive cost of court proceedings ..." and in an effort to "secure the just, speedy and inexpensive determination of every action," Mass.R.Civ.P. 1, the Justices of the Superior Court, through our Chief Justice, hereby adopt these time standards as a standing order of the Superior Court ("Standing Order"). The Court recognizes that the litigation process is memory dependent. To the extent that memory dims or becomes unreliable over prolonged periods of time, a just determination may be jeopardized. The concept of early and continuous judicial supervision and control is intended to enhance the quality of litigation and ensure that justice is fairly rendered.

This Standing Order recognizes that there are viable alternative methods of dispute resolution that may avoid delay and reduce the expense inherent in court proceedings, such as mediation, arbitration, summary jury trials, mini-trials, and reference to masters. Such alternate methods of dispute resolution are compatible with the case management objectives of these time standards. Nothing in this Standing Order shall act as a bar to any form of early intervention by the Court to identify cases suitable for alternative dispute resolution.

The Court recognizes and is sensitive to the impact that this Standing Order will have on local legal culture. We have meticulously avoided intrusion into this rich culture except to the extent necessary to preserve to the Court its responsibility to manage the pace of litigation without disturbing the harmony of the trial bar.

Accordingly, it is hereby ORDERED that:

(1) All civil actions filed in the Superior Court on or after March 1, 2007 shall be subject to the provisions of this Standing Order. All civil actions filed in the Superior Court on or before February 28, 2007 shall be subject to the Second Amended Standing Order 1-88, dated December 5, 1994.

(2) This Standing Order is applicable to all counties.

(3) The Court will schedule trial dates for both jury and jury-waived cases on its own initiative.

B. TRACK DESIGNATION

(1) All civil actions shall be designated for purposes of this Standing Order as falling within one of three tracks based upon the nature of the case:

Fast Track("F")

Average Track("A")

Accelerated Track("X")

A listing of case types by track is set forth in Schedules F, A, and X below.

(2) The plaintiff shall indicate the nature of the action and the appropriate track designation on the civil action cover sheet.¹

(3) For good cause shown, a party may move that a case be designated to a track other than the track selected by the plaintiff on the civil action cover sheet. The motion shall comply with Superior Court Rule 9A, and shall be referred to the attention of the Session Judge.

C. TRACKING ORDERS

While the clerk shall provide notice to all parties and their counsel of the track designation and corresponding tracking deadlines, the final responsibility for obtaining information from the clerk about the designation of the case and the corresponding tracking order shall rest with each party. Notification shall occur as follows:

(1) The cover sheet will alert parties to the existence of this Standing Order and to the track designation.

(2) Upon the filing of an action and in accordance with the track designated by the plaintiff, the clerk shall issue a tracking order that establishes the tracking deadlines for completion of the stages of litigation. Specific dates for the tracking deadlines shall be included in the tracking order.

(3) After 90 days from the filing of the action, the clerk shall forward a copy of the tracking order to all counsel of record. Counsel who appear in the action after the expiration of 90 days shall be responsible to learn the tracking deadlines for completing the stages of the litigation.

(4) All motions shall be filed within the time prescribed by the tracking order unless the proponent of the motion first moves for and obtains leave of court to file beyond the designated tracking deadline.²

(5) All pleadings, appearances, and other papers filed by counsel of record shall be accompanied by counsel's Board of Bar Overseers (BBO) Number.³ The BBO Number shall appear immediately after counsel's signature, address and telephone number.

D. AMENDMENTS TO THE TRACKING ORDERS

This Standing Order anticipates that there will be instances when the designation of a case to a particular track is inappropriate or the tracking deadlines cannot reasonably be met. The court recognizes that there are cases which by their very nature require special tracking deadlines, and the system is sufficiently flexible to accommodate these cases as follows:

(1) Amendments to the tracking order of a case may be granted upon motion, filed in accordance with Superior Court Rule 9A, and for good cause shown.

(2) All motions to amend a tracking deadline shall be referred to the attention of the Session Judge for decision. Motions (or oppositions thereto) shall be submitted on the papers, without oral argument.

E. RULE 16 CONFERENCES

This Standing Order also recognizes that the parties may benefit from a conference under Mass. R. Civ. P. 16 to address various matters that may aid in resolving a case or reducing the time or expense of litigation. Any party may ask the Court for a Rule 16 conference, and such requests will be honored if reasonable. The Court may also schedule a Rule 16 conference on its own initiative. Telephonic conferences may be arranged with the permission of the Court.

F. TRACKING DEADLINES

The following tracking deadlines shall be mandatory except as modified by order of the Session Judge or Regional Administrative Justice.⁴ Documents filed outside the tracking deadlines without leave of court need not be acted upon by the Court, even if filed by agreement between the parties. The tracking deadlines for F and A Track cases will be calculated from the date of filing of the complaint.

(i) After Designation to Fast ("F") Track:

(1) Three months (90 days)

* Service shall be completed on all parties.

* All returns of service shall be filed.

* If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice unless the Court has found good cause to extend the time for service.⁵

(2) Four months (120 days)

* Rule 12, 15,⁶ 19 and 20 motions shall be served.

* If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss.⁷ Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

(3) Five months (150 days)

* Rule 12, 15, 19 and 20 motions shall be filed with the Court.

(4) Six months (180 days)

* Rule 12, 15, 19 and 20 motions shall be heard by the Court.

(5) Ten months (300 days)

* All discovery requests shall be served and non-expert depositions completed.⁸ Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

(6) Eleven months (330 days)

* All motions for summary judgment shall be served. Nothing in this Standing Order bars summary judgment motions from being served earlier in the litigation.

(7) Twelve months (360 days)

* All motions for summary judgment shall be filed.

The remaining tracking deadlines assume that a motion for summary judgment has been filed. If no summary judgment motion is filed, earlier tracking deadlines may be set by the Court.

(8) Sixteen months (480 days)

* A pre-trial conference shall be conducted by the Court.⁹ The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.

* The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as Appendix A "PRE-TRIAL ORDER."

(9) Twenty-two months (660 days)

* The case shall be resolved and judgment shall issue.

(ii) After Designation to Average ("A") Track:

(1) Three months (90 days)

* Service shall be completed on all parties.

* All returns of service shall be filed.

* If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice, unless the Court has found good cause to extend the time for service.

(2) Four months (120 days)

* Rule 12, 19 and 20 motions shall be served.

* If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss. Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

(3) Five months (150 days)

* Rule 12, 19 and 20 motions shall be filed with the Court.

(4) Six months (180 days)

* Rule 12, 19 and 20 motions shall be heard by the Court.

(5) Fourteen months (420 days)

* Rule 15 motions shall be served.

(6) Fifteen months (450 days)

* Rule 15 motions shall be filed and resolved, with or without hearing.

(7) Twenty-four months (720 days)

* All discovery requests served and non-expert depositions completed. Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

(8) Twenty-five months (750 days)

* All motions for summary judgment shall be served.

(9) Twenty-six months (780 days)

* All motions for summary judgment shall be filed.

The remaining Tracking Deadlines assume that a motion for summary judgment will be filed. If no summary judgment motion is filed, earlier tracking dates can be set by the Court.

(10) Thirty months (900 days)

* A pre-trial conference shall be conducted by the Court. The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.

* The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as Appendix A "PRE-TRIAL ORDER."

(11) Thirty-six months (1,080 days)

* The case shall be resolved and judgment shall issue.

(iii) After Designation to Accelerated ("X") Track:

* All X Track cases seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G.L. c. 30A, Sect. 14, G.L. c. 249, Sect. 4, or similar statutes are governed by Standing Order 1-96, and the tracking deadlines set forth in that Order. Those tracking deadlines are as follows:

* No later than 90 days after service of the complaint, the administrative agency whose decision is at issue shall file a record of the proceeding.

* No later than 20 days after service of the record, all motions to dismiss or for a more definite statement under Mass. R. Civ. P. 12(b) or (e), all motions for leave to present testimony of alleged irregularities in the procedure before the agency that are not shown in the record under G.L. c. 30A, Sect. 14(5), and all motions for leave to present additional evidence under G.L. c. 30A, Sect. 14(6) shall be served.

* No later than 30 days after service of the record or the Courts decision on any motion specified above, whichever is later, the plaintiff shall serve a motion for judgment on the pleadings under Mass. R. Civ. P. 12(c).

* No later than 30 days after service of the motion for judgment on the pleadings, the defendant shall serve an opposition.

* All X Track cases under G.L. c. 123A, Sect. 12 (SDP initial commitment) shall be governed by the deadlines set forth in G.L. c. 123A or otherwise established by law.

* Unless an earlier date is required by law, all disputes in X Track cases shall be resolved and judgment shall issue no later than 12 months (360 days) after the filing of the complaint.

G. CASES NOT REACHED FOR TRIAL

Any case not reached for trial or otherwise disposed of within the prescribed tracking deadline shall be referred to the attention of the Regional Administrative Justice who shall coordinate with the Session Judge to ensure a speedy disposition within the session or to reassign the case to another session.

A record shall be maintained by the Regional Administrative Justice of all cases not tried or otherwise not disposed of as required under this Standing Order setting forth the reason for the trial delay and the action taken to resolve the matter.

Barbara J. Rouse

Chief Justice of the Superior Court

Effective: March 1, 2007

Dated:

SCHEDULES OF CASE TYPES BY TRACK

Schedule 'F' (Fast Track)*

CONTRACT

A01 Service, labor, and materials

A02 Goods sold and delivered

A03 Commercial paper

A08 Sales or lease of real estate

A99 Other (specify)

TORT

B03 Motor vehicle negligence- personal injury/property damage

B04 Other negligence-personal liability/property damage

B20 Personal injury- slip and fall

B21 Environmental

B22 Employment discrimination

B99 Other (specify)

REAL PROPERTY

C01 Land taking (eminent domain)

C02 Zoning appeal, G.L. c. 40A

C03 Disputes concerning title

C99 Other (specify)

EQUITABLE REMEDIES

D02 Reach and apply

D06 Contribution or indemnification

D12 Dissolution of partnership

D99 Other (specify)

MISCELLANEOUS

E95 Forfeiture G.L. c. 94C, Sect. 47

E96 Prisoner cases

* Excluding claims against the Commonwealth or a municipality, which are type E03 cases under Schedule 'A' (Average Track).

Schedule 'A' (Average Track)

CONTRACT

A12 Construction dispute

TORT

B05 Products liability

B06 Malpractice-medical

B07 Malpractice—other (specify)

B08 Wrongful death, G.L. c. 229, Sect. 2A

B15 Defamation (libel/slander)

B19 Asbestos cases

EQUITABLE REMEDIES

D01 Specific performance of contract

D07 Imposition of a trust

D08 Minority stockholder's suit

D10 Accounting

D13 Declaratory judgment, G.L. c. 231A

MISCELLANEOUS

E03 Claims Against Commonwealth or Municipality

E09 General contractor bond, G.L. c. 149, Sects. 29, 29A

E17 Civil Rights Act, G.L. c. 12, Sect. 11H

Schedule 'X' (Accelerated Track)

REAL PROPERTY

C04 Foreclosure of mortgage

C05 Condominium lien and charges

MISCELLANEOUS

E05 Confirmation of arbitration awards, G.L. c. 251

E07 G. L. c. 112, Sect. 12S (Mary Moe)

E08 Appointment of receiver

E11 Workers compensation

E12 G.L. c. 123A, Sect. 12 (SDP initial commitment)

E15 Abuse petition, G.L. c. 209A

E16 Auto surcharge appeal

E18 Foreign discovery proceeding

E19 Sex Offender Registry, G. L. c. 178M, Sect. 6

E97 Prisoner habeas corpus

E99 Other (specify)

NO SCHEDULE AND NO TRACK

MISCELLANEOUS

E25 Pleural Registry (Asbestos cases)

E14 G.L. c. 123A, Sect. 9 (SDP petition for release)

ENDNOTES

1. As a result of an amended complaint, crossclaim, counterclaim, or third party action, a case may change from a simple motor vehicle tort ("F" track) to a product liability case ("A" track) and warrant a motion to change the designation to the longer track.

2. This provision places the responsibility of "timely filing" documents on the attorneys and relieves the clerks of the initial responsibility of determining if documents are filed in violation of time standards. The clerk's office does not have the responsibility to return improperly filed papers.

3. This requirement will facilitate the generation of computer assisted notices and trial scheduling. During the past several years, the Trial Court has implemented a number of automated case management systems. The Superior Court civil case management system has been enhanced to support an attorney notice module which requires each attorney of record being assigned a unique code for purposes of computer sorting. The Board of Bar Overseers number provides that unique number and address.

4. Wherever the term Regional Administrative Justice is used in this Standing Order, it shall include his or her designee.

5. The dismissal will be entered automatically by the clerk under the authority of this Standing Order and notices given as required.

6. This provision does not affect the power of the Court to allow amendments to pleadings where "justice appears to require such amendment." The party seeking to amend late must obtain leave from the Session Judge and make a good faith showing of inability to move in timely fashion.

7. The default will be entered automatically by the clerk under the authority of this Standing Order and notices given as required.

8. A party may not have responded to timely filed requests for discovery at this juncture and accordingly motions to compel production of that discovery continue to be appropriate. It is expected that all responses will be filed no later than the date that the joint pre-trial memorandum is filed. Non-expert depositions, however, must be held and completed on or before this date. This Standing Order does not change the duty of a party to supplement under the provisions of Mass.R.Civ.P. 26(e).

9. Some summary judgment motions are sufficiently complex to require additional judicial time to render a decision. The case should nonetheless continue on track and be brought to the attention of the pre-trial conference Justice for his or her consideration and action.

APPENDIX A. NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF THE SUPERIOR COURT

CIVIL DOCKET#

RE: NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE

A final pre-trial conference in the above referenced case will be held on ____ in ____ at _____. All trial counsel are required to attend and submit their joint pre-trial memorandum to the Court no less than three business days prior to the pre-trial conference.

In accordance with Standing Order 1-88, the time standards tracking order, and in order to facilitate orderly and efficient progress towards trial, counsel for all parties shall meet for the purpose of preparing a joint pre-trial memorandum. Unless all counsel agree otherwise, counsel for the plaintiff shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

- (1) Any stipulations of agreed facts in a form suitable to be submitted as an exhibit at trial or read to the jury;
- (2) A brief statement by each party of what that party expects the evidence to show;
- (3) An agreed suggested description of the case to be read to the jury during empanelment, which shall bring to the attention of potential jurors any facts that may affect the ability of a juror to render a fair and impartial verdict;
- (4) A statement of all significant legal issues that the Court may need to resolve either before or during trial (including, particularly, any significant evidentiary issues), the positions of the parties on these issues, and a statement of authorities. Provide a copy of all cases and other authorities relied upon other than reported Supreme Judicial Court and Appeals Court cases.
- (5) The name and address of each witness to be called by each party. Failure to list a witness in the pre-trial memorandum may lead to an order precluding the testimony of that witness unless the need for the witness cannot reasonably be anticipated prior to trial or other good cause is shown. No party may reserve the right to add a witness without leave of the Court at the pre-trial conference. In addition, the parties shall identify any witness or party who needs an interpreter, as well as the language the interpreter needs to speak.
- (6) (a) The name, address and qualifications of each expert witness the parties intend to call, together with the subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify and a detailed summary of the grounds of each expert's opinion. If an expert witness's identity and expected testimony has previously been disclosed in response to expert interrogatories, this item may be satisfied by appending to the pre-trial memorandum a copy of the expert interrogatory responses. Otherwise, the substance of the expert opinion shall be contained within the pre-trial memorandum and shall be as detailed as would be expected in an answer to an expert interrogatory.

(b) Unless earlier resolved, whether any party moves to conduct any expert deposition under Mass. R. Civ. P. 26(b)(4). If so, unless the parties all agree to the expert deposition, a written motion to conduct the expert deposition and opposition shall be appended to the pre-trial memorandum so that the motion may be decided by the judge at the pre-trial conference.

(c) Whether any party intends to serve any Daubert-Lanigan motion challenging the admissibility of expert testimony and, if so, when the party intends to serve and file such a motion and the anticipated basis for such a motion. Failure to inform the court in the pre-trial memorandum of a party's intent to file a Daubert-Lanigan motion may, in the discretion of the court, constitute a waiver of the motion. If the date proposed for the filing of a Daubert-Lanigan motion is deemed by the court to be too close to trial, the court may set an earlier deadline for the filing of the Daubert-Lanigan motion. At the pre-trial conference, the court will set a date for hearing on any Daubert-Lanigan motion.

NOTE: Inclusion of an expert witness's identity and expected testimony in the joint pre-trial memorandum does not waive any party's right to object to that expert's testimony on the ground that responses to expert discovery were untimely or inadequate.

(7) Estimated length of trial.

(8) An itemization of the special or liquidated damages alleged.

(9) A certification that counsel for all parties have conferred and discussed the possibility of settlement, and the amenability of the case to mediation or other forms of alternate dispute resolution. If alternative dispute resolution has commenced or will commence, the parties shall inform the Court of its status. The parties shall not disclose the contents of settlement demands or offers in the pre-trial memorandum.

The joint pre-trial memorandum shall be submitted jointly. All lead counsel at trial are expected to attend the final pre-trial conference.

No later than five business days prior to the scheduled trial, counsel shall meet and review the exhibits proposed to be introduced by each party and all materials to be shown to the jury. Based on that meeting and review of exhibits, counsel shall prepare a joint exhibit list identifying 1) those exhibits that all parties agree are admissible into evidence and 2) proposed exhibits of each party as to which there is no agreement on admissibility. The exhibit list is to be presented to the trial judge at the commencement of trial with a copy for the court reporter. The Court will determine whether the agreed-upon exhibits shall be pre-marked and introduced at the commencement of trial.

In the event deposition transcripts are to be offered at trial, and there are objections to any of the answers set forth in the transcript, the parties, not less than three days prior to the commencement of trial, are to supply to the court a transcript of the testimony with objections highlighted and, in the margin, a brief statement of the grounds of the objection and the response by the proponent of the testimony. Videotaped depositions are governed by Mass. R. Civ. P. 30A.

By the Court (, J.)

Dated:

Clerk of the Courts