

Jurisdiction: Massachusetts

Question

1. Massachusetts regulations that address which documents must be stored in paper form verses electronic form.

Massachusetts regulations and case law provide guidance on the storage of documents in paper versus electronic form, addressing specific requirements for filing, retention, and accessibility. The rules vary depending on the type of document, the entity responsible for its storage, and the purpose of the record. Below is an analysis of the relevant legal provisions and judicial interpretations.

Massachusetts Rules of Electronic Filing

[Massachusetts Electronic Filing Rules Rule 9](#) outlines requirements for electronic filing and specifies circumstances under which paper filing is mandatory. It states that all documents submitted for e-filing must be in searchable PDF format, with formatting consistent with Massachusetts Court Rules and Orders. However, it also provides that each court may identify specific documents that must be filed by conventional methods in paper form only ([Massachusetts Electronic Filing Rules Rule 9](#)) [1]. This rule establishes a framework for determining whether documents should be stored electronically or in paper form, leaving discretion to individual courts to mandate paper filing for certain types of records.

Construction Documents Under [524 CMR 1.09](#)

Regulations under [524 CMR 1.09](#) address the filing of construction documents, which may be submitted in either paper or electronic form. These documents must be prepared and stamped by a registered design professional and must be sufficiently clear to demonstrate compliance with applicable laws and regulations ([524 CMR 1.09](#)) [2]. This regulation provides flexibility in the choice of format, allowing either paper or electronic storage, as long as the documents meet clarity and compliance standards.

Public Records Law and Accessibility

Massachusetts public records law, as interpreted in case law, emphasizes accessibility and usability of records, regardless of their physical form. In [Attorney General v. District Attorney for Plymouth District](#) , the court held that public records maintained in electronic databases must be searchable and accessible in a reasonable and usable format to ensure compliance with the public records law ([Attorney General v. District Attorney for Plymouth District, 484 Mass. 260 \(2020\)](#)) [3]. Similarly, the law requires governmental entities to design electronic record-keeping systems that maximize public access to records ([Attorney General v. District Attorney for Plymouth District, 484 Mass. 260 \(2020\)](#)) [3]. These provisions underscore the importance of electronic storage systems that facilitate retrieval and public access, while not precluding the use of paper records where necessary.

Retention of Evidence and Biological Material

In criminal cases, Massachusetts law imposes specific requirements for the retention of evidence and biological material. General Laws c. 278A, § 16(a), mandates that governmental entities retain such materials for the duration of a person's custody or supervision in connection with a crime. The materials must be preserved in a manner that prevents destruction or deterioration ([District Attorney for Northern](#)

[District v. Superior Court Department.](#), 482 Mass. 336 (2019)) [4]. While the statute does not explicitly address electronic versus paper storage, the emphasis on preservation suggests that the format chosen must ensure the integrity of the evidence.

Student Records Regulations

Massachusetts student records law, governed by General Laws c. 71, § 34D, and 603 CMR 23.00, provides for the maintenance, retention, duplication, storage, and destruction of student records. These regulations do not specify whether records must be stored in paper or electronic form but require that parents or guardians have access to inspect records concerning their children ([Champa v. Weston Public Schools](#), 473 Mass. 86 (2015)) [5]. The focus is on accessibility rather than the format of storage.

Retention Schedules and Internal Management

The Massachusetts Statewide Records Retention Schedule provides guidelines for the retention of certain types of records, such as homicide investigation records and crime lab case records. However, these schedules are not formal regulations and must yield to statutory requirements, such as those under the Fair Information Practices Act (FIPA), which prohibits unreasonable maintenance of personal data after collection ([Amato v. District Attorney for Cape and Islands Dist.](#), 80 Mass.App.Ct. 230 (2011)) [6]. This indicates that while retention schedules may influence storage practices, they do not have the force of law to mandate specific formats.

Massachusetts law and regulations provide a nuanced approach to document storage, balancing the need for accessibility, preservation, and compliance with legal standards. Courts and agencies retain discretion to determine the appropriate format—paper or electronic—based on the nature of the records and their intended use.

Commentary about this question

MA Superior Pretrial Conferences, Scheduling, Management

KeyRules • MA KR Superior 308

This text outlines Massachusetts Superior Court procedures regarding filing and management of pretrial and case management documents, including protocols for electronically stored information. It sets forth requirements for filing formats, deadlines, electronic signatures, and service rules under Massachusetts Rules of Civil Procedure and Massachusetts Rules of Electronic Filing. The framework addresses document form, including use of paper versus electronic filing, with electronic filing governed by specific rules mandating searchable PDFs, file size limits, and security measures. It covers obligations for document retention, redaction of personal identifying information, and the court's discretion to accept or reject filings. This includes how electronic and paper documents are to be handled and how filings made under different formats are considered filed. The procedures detail timing requirements and standards for electronic discovery conferences and preservation of electronically stored information, establishing a comprehensive regulatory environment for document storage and submission in the Massachusetts jurisdiction.

The above response is AI-generated and may contain errors. It should be verified for accuracy.

Cases, statutes, and regulations

1. Rule 9. Format and Content of Documents

MA R S CT RULE 1:25 EFILE Rule 9

"...(a) Documents Shall Be Filed in Searchable PDF. Except where specifically provided, all documents submitted for e-filing must be in searchable Portable Document Format (PDF). Documents should be submitted as electronically converted PDFs rather than scanned PDFs whenever possible. Scanned PDFs shall be made searchable using optical-character-recognition software, such as Adobe Acrobat. Documents shall not be locked or otherwise password protected. (b) Documents Shall Be Formatted in Compliance with Massachusetts Court Rules and Orders. Users shall format all documents in accordance with the Massachusetts Court Rules and Orders governing formatting of paper documents, including page limits and font style and size, unless a deviation has been allowed by court order. (c) Internal Links Are Allowed. Each document submitted for e-filing may contain electronic links, but only to navigate within the same document. (d) Paper Filing Required. Each court may identify documents that must be filed by conventional methods in paper..."

"...(b) Documents Shall Be Formatted in Compliance with Massachusetts Court Rules and Orders. Users shall format all documents in accordance with the Massachusetts Court Rules and Orders governing formatting of paper documents, including page limits and font style and size, unless a deviation has been allowed by court order...."

"...(d) Paper Filing Required. Each court may identify documents that must be filed by conventional methods in paper form only...."

2. 1.09: Submissions

524 MA ADC 1.09

"...(1) General. Submissions consisting of construction documents, statement of special inspections, if applicable, and other data required by the Office shall be attached to each permit application. The construction documents shall be prepared and stamped by a registered design professional. (2) Construction Documents. Construction documents shall be dimensioned and filed in either paper or electronic form. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of 524 CMR and relevant laws, ordinances, rules and regulations. (3) Base Flood Elevations. Base flood elevations shall be identified by the registered design professional when applicable and determined in accordance with methods set forth in 780 CMR: State Board of Building Regulations and Standards. ..."

"...(2) Construction Documents. Construction documents shall be dimensioned and filed in either paper or electronic form. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of 524 CMR and relevant laws, ordinances, rules and regulations...."

3. Attorney General v. District Attorney for Plymouth District

Supreme Judicial Court of Massachusetts, Suffolk. • March 12, 2020 • 484 Mass. 260 • 141 N.E.3d 429

"...But where public records are in electronic form, as they increasingly are and will be, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record under the public records law. This interpretation of the public records law is supported by the regulations promulgated by the supervisor, who is required to adopt regulations to implement the public records law. See G. L. c. 66, S 1. Under those regulations, when a governmental entity is designing or acquiring an electronic record keeping system or database, it "shall ensure, to the extent feasible" that it "allows for information storage and retrieval methods permitting retrieval of public portions of records to provide maximum public access." 950 Code Mass. Regs. S 32.07(1)(e)(2) (2017). The regulations declare:..."

"...A records custodian is obligated to provide access to existing files, "regardless of physical form or characteristics" (emphasis added). G. L. c. 4, S 7, Twenty-sixth. If public records are maintained in an electronic database, they must be searchable and accessible in a reasonable and useable format so as not to undermine the purpose of the public records law. In a world in which records and information are increasingly stored in electronic databases, a public record that would otherwise be subject to the public records law "does not become immune from production simply by virtue of the method the (public entity) employs to catalogue the document," or track the information. *American Civ. Liberties Union of Ariz.*, 240 Ariz. at 148, 377 P.3d 339, quoting *Lake v. Phoenix*, 220 Ariz. 472, 481, 207 P.3d 725 (Ct. App.), rev'd in part, 222 Ariz. 547, 218 P.3d 1004 (2009)...."

"...If public records are maintained in an electronic database, they must be searchable and accessible in a reasonable and useable format so as not to undermine the purpose of the public records law. Mass. Gen. Laws Ann. ch. 4, S 7...."

"...Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. Mass. Gen. Laws Ann. ch. 66, S 10(a)...."

4. District Attorney for Northern District v. Superior Court Department.

Supreme Judicial Court of Massachusetts, Suffolk.. • May 21, 2019 • 482 Mass. 336 • 122 N.E.3d 1051

"...Most importantly, G. L. c. 278A, S 16 (a), requires governmental entities "in possession of evidence or biological material" related to the investigation of a crime of which someone was convicted to "retain such evidence or biological material for the period of time that a person remains in the custody of the commonwealth or under parole or probation supervision in connection with that crime . Each governmental entity shall retain all such evidence or biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration.", This retention requirement applies to clerks' offices once an exhibit is admitted in evidence, at which point the evidence is in the clerk's possession. See G. L. c. 278A, S 1 (defining "(g)overnmental entity" as "an official body of the commonwealth, or of a county, city or town within the commonwealth")...."

"...With the limitations discussed *infra*, courts, and particularly clerks' offices, have a statutory duty to secure, preserve, and retrieve exhibits admitted in criminal cases that result in conviction. Unfortunately, most of the court houses in this Commonwealth lack the facilities and trained staff to meet their statutory responsibility. Clerks' offices do the best they can with the resources and facilities provided, but what is needed is a state of the art facility staffed by trained professionals with appropriate organizational and retrieval capability and with climate control to preserve adequately forensic and scientific evidence. The need to preserve these exhibits adequately presents the three branches of government with a grave challenge that raises questions about the fair administration of

justice. There is a shared responsibility among the branches of government to solve this problem. No branch is capable of solving it alone...."

5. **Champa v. Weston Public Schools**

Supreme Judicial Court of Massachusetts, Middlesex. • October 23, 2015 • 473 Mass. 86 • 39 N.E.3d 435

"...ii. Massachusetts student records law and regulations. General Laws c. 71, S 34D, provides: "The board of education shall adopt regulations relative to the maintenance, retention, duplication, storage and periodic destruction of student records by the public elementary and secondary schools of the (C)ommonwealth. Such rules and regulations shall provide that a parent or guardian of any pupil shall be allowed to inspect academic, scholastic, or any other records concerning such pupil which are kept or are required to be kept." In compliance with the statutory directive, the Department of Education (department) has promulgated student record regulations, 603 Code Mass. Regs. SS 23.00, directing that no third party shall have access to information in or from a student record without the consent of the eligible student or the parent. 603 Code Mass. Regs. S 23.07(4) (2006)...."

"...Massachusetts student records law and regulations protect student records only as they pertain to certain information, not entire documents. M.G.L.A. c. 71, S 34D; 603 CMR 23.02, 23.07(4)...."

"...2. Public records law. General Laws c. 66, S 10, of the Massachusetts public records law (public records law) requires access to public records in the possession of public officials. *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 430, 446 N.E.2d 1051 (1983). "Public records" are broadly defined, and include all "documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the (C)ommonwealth, or of any political subdivision thereof." G.L. c. 4, S 7, Twenty-sixth...."

6. **Amato v. District Attorney for Cape and Islands Dist.**

Appeals Court of Massachusetts, Suffolk. • August 25, 2011 • 80 Mass.App.Ct. 230 • 952 N.E.2d 400

"...These allegations, taken as true, plausibly suggest that the defendants have maintained more personal data than reasonably necessary to carry out their statutory functions. The defendants, however, argue that their retention of Amato's DNA profile and other records is reasonable as matter of law because (1) G.L. c. 66A, S 2(l), does not require an agency to destroy or return personal data when no longer reasonably necessary; (2) the Massachusetts Statewide records retention schedule (retention schedule) sets forth per se reasonable retention periods for homicide investigation records and crime lab case records; and (3) "nothing in FIPA requires the (defendants) to litigate the merits of a pending criminal appeal in a collateral civil action." We are not persuaded...."

"...The records conservation board's retention schedule for homicide investigation records and crime lab case records was not a formal "regulation," as would carry the force and effect of law, and thus, the retention schedule had to yield to a duly enacted statute like the Fair Information Practices Act (FIPA), which prohibited unreasonable maintenance of personal data after collection; retention schedule concerned only internal management of state agencies and did not affect the rights of or procedures available to the public, and it neither stated nor intimated

that it was a formal regulation, or that its promulgation conformed to rulemaking procedures. M.G.L.A. 30, S 42; 30A, S 1(5); c. 66A, S 2(l)...."

7. 1.02: General Provisions

220 MA ADC 1.02

"...(b) Form. Except for forms provided by the Department, which shall be used where appropriate, pleading, documents, or other papers filed with the Department shall be printed or typewritten on paper cut or folded to either letter or legal size, 8 1/2 inches wide by 11 to 14 inches long, with left-hand margin not less than 1 1/2 inches wide and other margins not less than one inch. The impression shall be double spaced, except that quotations in excess of a few lines may be single spaced and indented. Double-sided pages are permitted. Photocopied or the like copies will be accepted as typewritten, provided all copies are clear and permanently legible. The Department's Electronic Filing Guidelines govern the form of electronic filings...."

"...(1) Office. The principal office of the Department is One South Station, 5th Floor, Boston, Massachusetts. The office of the Department shall be open from 8:45 A.M. to 5:00 P.M. each weekday except Saturdays, Sundays, and legal holidays. (2) Date of Receipt. (a) By the Department. All communications, including correspondence, motions, and pleading, shall be deemed to be filed or received on the date on which they are received by the Department at its principal office. With respect to electronic filings, the document is deemed filed on the date the Department receives the electronic filing if it is received during the Department's normal business hours. If the document is electronically filed on a weekend, on a holiday observed by the Department, or during hours when the Department is closed, the document will be deemed filed on the date when the Department is next open for business. (b) By Parties and..."

"...(c) Filing. All pleading documents or papers relating to matters requiring action by the Commission shall be filed with the Secretary of the Department, One South Station, 5th Floor, Boston, Massachusetts 02110, unless electronically files pursuant to 220 CMR 1.02(8)(d)...."

"...(d) Electronic Filing. Papers may be filed and signed by electronic means pursuant to the Department's Electronic Filing Guidelines. A paper filed electronically in compliance with the Electronic Filing Guidelines is a written paper or document for purposes of 220 CMR 1.00...."

8. Boston Globe Media Partners, LLC v. Retirement Bd. of Massachusetts Bay Transp. Authority Retirement Fund

Superior Court of Massachusetts, Suffolk County. • March 09, 2016 • Not Reported in N.E.3d • 33 Mass.L.Rptr. 374

"...MEMORANDUM AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT. 1.1. Legal and Procedural Background. By law, "(e)very person having custody of any public record" must, "without unreasonable delay," allow the record "to be inspected and examined by any person" and provide "one copy thereof upon payment of a reasonable fee." G.L. c. 66, S 10(a). Up until 2013, the public records law applied only to state and local government agencies, authorities, and political subdivisions of the Commonwealth. That is because the Legislature had defined "public records" to mean any documents or data "made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose," unless the materials or data fall within a specific statutory exemption. G.L. c. 4, S 7, clause twenty-sixth. An entity that falls within this definition are referred in the public records law as a "custodian" of the

public records in its custody. G.L. c. 66, S 10(b) & (c). By law there is a presumption that any record held by such a custodian "is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies." Id. S 10(c). The MBTA is subject to the public records law because it is a "political subdivision of the commonwealth." See G.L. c. 161A, S 2...."

9. **Rahim v. District Attorney for Suffolk District**

Supreme Judicial Court of Massachusetts, Suffolk. • December 31, 2020 • 486 Mass. 544 • 159 N.E.3d 690

"...For purposes of statute defining public records subject to disclosure under the Massachusetts public records law, which includes any documentary materials or data received by any officer or employee of any Massachusetts governmental entity, term "received" means to take possession or delivery of, and does not require that the officer or employee own those records. Mass. Gen. Laws Ann. ch. 4, S 7; Mass. Gen. Laws Ann. ch. 66, S 10(a)...."

"...Determining the scope of the Massachusetts public records law is the province of the supervisor of public records, the Superior Court, and, ultimately, the Supreme Judicial Court. Mass. Gen. Laws Ann. ch. 66, S 10(a)...."

"...The Massachusetts public records law does not vest agencies with the authority to determine the statute's scope by making interagency agreements. Mass. Gen. Laws Ann. ch. 66, S 10(a)...."

"...1. Public records. Two statutes primarily govern public records requests. General Laws c. 66, S 10 (a), of the public records law requires State governmental entities to provide access to "public records" upon request. The definition of "public records" is provided in G. L. c. 4, S 7, Twenty-sixth, and includes all "documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee" of any Massachusetts governmental entity (emphasis added). The district attorney maintains, and the Superior Court held, that "received" implies ownership and, therefore, the FBI materials are not public records under G. L. c. 4, S 7, Twenty-sixth, because the materials belong to the FBI, not the district attorney. We disagree...."

10. **Globe Newspaper Co. v. Commissioner of Educ.**

Supreme Judicial Court of Massachusetts, Suffolk. • April 04, 2003 • 439 Mass. 124 • 786 N.E.2d 328

"...What follows the enunciation of the general principle of reasonable access are more specific statutory provisions fleshing out or defining at least some of the particulars respecting its implementation. For example, while fees for providing copies are to be "reasonable," the statute then specifically sets the fees to be charged for copies of records "in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department." G.L. c. 66, S 10 (a). Similarly, while custodians must provide access to public records without "unreasonable delay," S 10 (b) details the particular procedures that must be followed by an individual who wishes to examine or copy public records, and the specific requirement that the custodian comply with a properly submitted request "within ten days" of its receipt. Just as one would conclude from the statutory language read in its entirety that the Legislature has made a specific judgment with respect to what a "reasonable fee" ought to be for a wide array of commonly requested police and fire department records, it would be equally logical to conclude that the Legislature has made a specific judgment that a period of more than ten days would constitute "unreasonable delay" in making public records available for examination and copying...."

11. Friedman v. Division of Administrative Law Appeals

Appeals Court of Massachusetts, Suffolk. • March 15, 2024 • 103 Mass.App.Ct. 806 • 231 N.E.3d 957

"...While no binding authority interprets the reasonable description requirement in our public records statute, the Federal Freedom of Information Act (FOIA) contains a similarly worded provision. See 5 U.S.C. S 552(a) (3)(A) (upon request that "reasonably describes such records" agency must promptly make records available unless agency or record is otherwise exempt). In light of the similarities between the Massachusetts and Federal statutes, Massachusetts courts have previously looked to the Federal law for guidance. See *Attorney Gen. v. District Attorney for Plymouth Dist.*, 484 Mass. 260, 276, 141 N.E.3d 429 (2020). See generally *Scaccia v. State Ethics Comm'n*, 431 Mass. 351, 355, 727 N.E.2d 824 (2000). Contrast *Boston Retirement Bd.*, 388 Mass. at 432-433, 446 N.E.2d 1051 (differences between FOIA and Massachusetts statute reflect Legislature's conscious decision to depart from FOIA)...."

12. Commonwealth v. Babcock

Appeals Court of Massachusetts, Middlesex. • November 29, 2021 • 100 Mass.App.Ct. 527 • 178 N.E.3d 909

"...The defendant argues that out-of-State court records must conform to the requirements of both rule 39 (a) and rule 40 (a) (1), because rule 39 (a) governs only admissibility, while rule 40 (a) (1) deals with authenticity. This argument is unavailing. "Rule 39 substantially conforms to (G. L. c. 233, S 69)," its statutory counterpart. Reporters' Notes to Rule 39, Mass. Ann. Laws Court Rules, Rules of Criminal Procedure, at 432 (LexisNexis 2021-2022). General Laws c. 233, S 69, has been interpreted as an independent means of authentication, obviating the need for further authentication under other provisions. As the Supreme Judicial Court stated in *Portland Me. Publ. Co. v. Eastern Tractors Co.*, 289 Mass. 13, 15, 193 N.E. 888 (1935):..."

13. Boston Globe Media Partners, LLC v. Department of Public Health

Supreme Judicial Court of Massachusetts, Suffolk. • June 17, 2019 • 482 Mass. 427 • 124 N.E.3d 127

"...In this public records case, Boston Globe Media Partners, LLC (Globe), appeals from an order of the Superior Court granting the Department of Public Health's (DPH) motion for summary judgment and denying the Globe's motion for summary judgment. The Globe asked the judge to declare that electronic indices of publicly available birth and marriage data constitute public records and to order DPH to produce them. DPH argued that it could withhold the requested indices pursuant to G. L. c. 4, S 7, Twenty-sixth (a) (exemption (a)), which exempts from the definition of public records "materials or data" that are "specifically or by necessary implication exempted from disclosure by statute." DPH also argued that it could withhold the requested indices pursuant to G. L. c. 4, S 7, Twenty-sixth (c) (exemption (c)), which exempts from the definition of public records "personnel and medical files or information (and) any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." The judge concluded DPH could withhold the indices pursuant to exemption (c), but not pursuant to exemption (a)...."

Administrative decisions and guidance

In re Verizon New England Inc.

Massachusetts Department of Telecommunications and Energy • August 23, 2002 • 2002 WL 31928522

"...Slip Copy Re Verizon New England, Inc. dba Verizon Massachusetts' Resale Services D.T.E. 01-20 Massachusetts Department of Telecommunications and Energy August 23, 2002 APPEARANCES: Bruce P. Beausejour, Esq., Barbara Anne Sousa, Esq., Verizon Massachusetts, 185 Franklin Street — Room 1403, Boston, MA 02110, and Barbara..."

"...3525, FOR: VERIZON NEW ENGLAND, INC. d/b/a VERIZON MASSACHUSETTS, Intervenor , Thomas Reilly, Attorney General, By: Karlen J. Reed, Assistant..."

"...N.W. — Suite 300, Washington, DC 20007, FOR: Allegiance Telecom of Massachusetts, Inc., FOR: El Paso Networks, LLC, FOR: PaeTec Communications, Inc..."

"...Bayring Communications, FOR: The Association of Communications Enterprises, FOR: XO Massachusetts, Inc., Intervenor , James Cornblatt, Esq., ServiSense. com, Inc., 180 Wells..."

In re Distribution System Safety Stray Voltage, Manhole Safety Assessments

Massachusetts Department of Telecommunications and Energy • December 09, 2005 • 2005 WL 3872457

"...Distribution System Safety Stray Voltage and Manhole Safety Assessments Letter Massachusetts Department of Telecommunications and Energy December 9, 2005 LETTER Dear..."

"...Independent Assessment of Stray Voltage in Underground Distribution Systems of Massachusetts Electric Companies ('Stray Voltage Final Report') as prepared by Navigant..."

"...inventory, as this threshold ensures that all electric companies in Massachusetts will test for stray voltage at or above levels that..."

"...may also be practicable. We would expect your plan to address achieving, if feasible over time, detection at that level or..."

Petition of Massachusetts Electric Company and Nantucket Electric Company, pursuant to G. L. c. 164, s 94, and 220 C.M.R. s 5.00, for a General Increase in Electric Rates and Approval of a Revenue Decoupling Mechanism.

Massachusetts Department of Public Utilities • November 30, 2009 • 2009 WL 4543112

"...Slip Copy Re Massachusetts Electric Company D. P.U. 09-39 Massachusetts Department of Public Utilities November 30, 2009 Amy G. Rabinowitz..."

"...11 South Main Street, Suite 500, Concord, NH 03301, FOR: MASSACHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY D/B/A NATIONAL GRID, Petitioner Martha Coakley, Attorney General, Commonwealth of Massachusetts, By: David Cetola, Tackey Chan, John J. Geary, Sandra Callahan..."

"...Boston, MA 02108, Intervenor Rachel Graham Evans, Deputy General Counsel, Massachusetts Department of Energy Resources, 100 Cambridge Street, Suite 1020, Boston, MA 02114, FOR: MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES, Intervenor Shanna Cleveland, Esq., Conservation Law..."

"...THE LOW-INCOME WEATHERIZATION AND FUEL ASSISTANCE PROGRAM NETWORK AND MASSACHUSETTS ENERGY DIRECTORS ASSOCIATION, Intervenor Todd J. Griset, Esq., Donald J..."

Practical Law

Massachusetts Appeals: Filing and Serving Documents

Practice notes • **Maintained** • Massachusetts

A Practice Note explaining the procedures for filing and serving documents for a civil appeal under the Massachusetts Rules of Appellate Procedure in the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court (SJC). This Note details the key considerations for both electronic filing (e-filing) and conventional filing, including who is eligible to file, required document content, and specific formatting rules. It addresses critical topics such as calculating deadlines, seeking extensions, and correctly handling redacted or impounded information to maintain confidentiality. This Note also outlines the methods for properly serving documents on other parties, the requirements for a certificate of service, and how to resolve common filing issues, such as document rejections or technical failures with the eFileMA system, to ensure timely and compliant submissions.

"...Searchable PDF. All e-filed documents must be searchable PDFs, unless otherwise provided. The Appeals Court requires and the SJC prefers parties to electronically convert Word (or similar word processing software) documents into PDFs whenever possible. For preexisting documents that cannot electronically convert into PDFs, counsel must make them searchable PDFs when possible by using a scanner or software with optical character recognition (OCR) capabilities. (Mass. R. E. F. 9(a); Appeals Court Guide to Electronic..."

"...The Massachusetts Appeals Court (Appeals Court), Massachusetts's intermediate appellate court, and the Massachusetts Supreme Judicial Court (SJC), Massachusetts's highest appellate court, typically only consider timely and properly filed and served documents. This Note explains the key procedures and considerations related to electronically and conventionally filing and serving documents in a civil appeal to a Massachusetts appellate court. This Note also explains how to resolve common filing and service issues...."

"...A Practice Note explaining the procedures for filing and serving documents for a civil appeal under the Massachusetts Rules of Appellate Procedure in the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court (SJC). This Note details the key considerations for both electronic filing (e-filing) and conventional filing, including who is eligible to file, required document content, and specific formatting rules. It addresses critical topics such as calculating deadlines, seeking extensions, and correctly handling redacted or impounded information to maintain confidentiality. This Note also outlines the methods for properly serving documents..."

"...Links. A document can contain internal bookmarks and links that navigate only within the same document (Mass. R. E. F. 9(c)). Counsel should use electronic bookmarks and links to ease the appellate court's navigation of documents such as briefs and appendices. The Appeals Court explicitly encourages the practice.

(Massachusetts Appeals Court: How to Create PDFs with Bookmarks and Internal Links; Appeals Court Guide to Electronic Briefs.)..."

Office Lease Agreement (Multi-Tenant Gross Lease) (Pro-Landlord Short Form) (MA)

Standard documents • **Maintained** • Massachusetts

A Standard Document lease agreement drafted in favor of the landlord for use in a multi-tenant office building in Massachusetts. In this Standard Document, the tenant pays a fixed rent and the landlord pays all operating expenses, property taxes, and other charges for the building. A lease with this payment arrangement is sometimes called a gross lease. This Standard Document has integrated notes with important explanations and drafting and negotiating tips for both landlords and tenants.

"...In Massachusetts, use restrictions are enforceable in a lease, but they must be clearly drafted. Any ambiguity is strictly construed against the landlord, because equity does not imply covenants restraining the beneficial use of the property (see *Mut. Paper Co. v. Hoague-Sprague Co.*, 8 N.E.2d 802, 806-07 (Mass. 1937))...."

"...Instead of using a pre-negotiated rent for the extension term, the lease may require, as a precondition to extension, that the parties agree to a fair market rent for the extension term and, if they cannot reach an agreement, submit to some form of dispute resolution. Leases customarily specify a form of alternate dispute resolution, usually arbitration, to resolve the issue of fair market rent...."

"...For sample language specifying arbitration as a method for determining the fair market rental value for extension options, see Standard Document, Office Lease Agreement (Multi-Tenant Net Lease) (Pro-Landlord Medium Form): Article XX. For information about baseball arbitration for determining rental value, see Standard Clause, Rent Adjustment Determination Clause (Baseball Method) (Ground Lease)...."

"...This Standard Document has been updated to reflect the Massachusetts Supreme Judicial Court decision in *Cummings Properties, LLC v. Hines*, 2023 WL 6202474 (Mass., Sept. 25, 2023) regarding the enforceability of liquidated damages clauses in commercial leases...."

Office Lease Agreement (Multi-Tenant Base Year Modified Gross Lease) (Pro-Landlord Short Form) (MA)

Standard documents • **Maintained** • Massachusetts

A short form lease agreement drafted in favor of the landlord for use in a multi-tenant office building in Massachusetts. In this Standard Document, the tenant pays its proportionate share of the increases in real estate taxes and operating expenses above those expenses incurred in a base year. A lease with this type of escalation payment arrangement is sometimes called a modified gross lease or a base year model gross lease. This Standard Document has integrated notes with important explanations and drafting and negotiating tips for landlords and tenants.

"...In Massachusetts, use restrictions are enforceable in a lease, but they must be clearly drafted. Any ambiguity is strictly construed against the landlord, because equity does not imply covenants restraining the beneficial use of the property (see *Mut. Paper Co. v. Hoague-Sprague Co.*, 8 N.E.2d 802, 806-07 (Mass. 1937))...."

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taxes and operating expenses above those expenses incurred in a base year. A lease with this type of escalation payment arrangement is sometimes called a modified gross lease or a base year model gross lease. This Standard Document has integrated notes with important explanations and drafting and negotiating tips for landlords and tenants...."

"...For sample language specifying arbitration as a method for determining the fair market rental value for extension options, see Standard Document, Office Lease Agreement (Multi-Tenant Net Lease) (Pro-Landlord Medium Form): Article XX. For information about baseball arbitration for determining rental value, see Standard Clause, Rent Adjustment Determination Clause (Baseball Method) (Ground Lease)...."

"...This Standard Document has been updated to reflect the Massachusetts Supreme Judicial Court decision in *Cummings Properties, LLC v. Hines*, 2023 WL 6202474 (Mass., Sept. 25, 2023) regarding the enforceability of liquidated damages clauses in commercial leases...."

Additional secondary sources

ADMISSION INTO EVIDENCE OF PAPER RECORDS CONVERTED TO ELECTRONIC FORM

Consumer Finance Law Quarterly Report • 60 Consumer Fin. L.Q. Rep. 325

This article provides an analysis of the ability of business record-keepers to convert paper documents to electronic images for purposes of long term storage under: (1) the Federal Rules of Evidence; (2) the Uniform Rules of Evidence; (3) the federal Electronic Signatures in Global and National Commerce Act (ESIGN); and (4) the Uniform Electronic Transactions Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in July 1999 (UETA). In particular, it reviews the rules that apply when certain records (not including negotiable instruments or documents) are converted to electronic form and the paper originals are destroyed after conversion. The analysis is composed of the following parts: • Part II.: Summary • Part III.: Record Integrity and Introduction of Electronic Records Under the Rules of Evidence • Part IV.: The UETA and ESIGN • Part V.: Record Retention Under the UETA and ESIGN • Part VI.: The Impact of...

"...An electronic record is stored on a medium, such as magnetic or optical disk, in a form that must be translated on two levels...."

"...The applicable rules governing the right to enforce, and the obligation to preserve, documents converted from paper to electronic form depend on the circumstances under which the document is created and the purposes for which it is being used...."

"...Any regulation addressing the legal effect, validity, or enforceability of contracts or other records must: • be consistent with Title I and Title II of ESIGN; • not specify a particular technology for creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and • reference ESIGN if enacted later...."

"...Regulations established after the date the UETA became effective in the state may prohibit the use of electronic records for documents that must be retained for evidentiary and audit purposes...."

CURRENT I-9 EMPLOYMENT VERIFICATION PROCEDURES, BEST PRACTICES FOR IRCA COMPLIANCE, AND PREPARING FOR A GOVERNMENT INVESTIGATION

Massachusetts Continuing Legal Education, Inc. • IPM MA-CLE 29-1

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer “to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.” See *Chamber of Commerce of U.S. v. Whiting*, 131 S. Ct. 1968, 1970 (2011) (quoting 8 U.S.C. § 1324a(a)(1)(A)). As part of this prohibition, the IRCA requires U.S. employers to complete and retain a Form I-9 (Employment Eligibility Verification) for any employee hired after November 6, 1986. The Form I-9 gathers information and documentation about an employee's eligibility to work in the United States. See Immigration and Nationality Act (INA) § 274A (codifying IRCA provisions on employer conduct with respect to hiring practices, I-9 completion, and document retention in the main source of immigration law); see also 8 C.F.R. § 274a (outlining the substantive requirements for employer I-9 compliance). The I-9 process specifically obligates...

“...• a United States passport or U.S. Passport Card; • an Alien Registration Receipt Card or Permanent Resident Card (Form I-551); • a foreign passport that contains a temporary I-551 stamp or a temporary I-551 printed notation on a machine-readable immigrant visa; • an Employment Authorization Document which contains a photograph (Form I-766); • for a nonimmigrant alien authorized to work for a specific employer because of their status: (a) a foreign passport and (b) Form I-94 or Form...”

“...The USCIS Handbook for Employers, Guidance for Completing Form I-9 (Form M-274), available at <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>, is an excellent source for employers to consult with questions on completing Form I-9 for nonimmigrant visa holders....”

“...At the time of the inspection, the employer is required to make all Forms I-9 available in their original form (i.e., paper, electronic, microfilm, or microfiche) at the location where the request is made....”

“...See “DHS Announces Flexibility in Requirements Related to Form I-9 Compliance,” available at <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance> (discussing a sixty-day extension period for notices of investigation served during March 2020); see also related extensions available at <https://www.ice.gov/news/releases/ice-announces-extension-flexibility-rules-related-form-i-9-compliance>; <https://www.ice.gov/news/releases/ice-announces-another-extension-i-9-compliance-flexibility-no-more-extensions>; <https://www.ice.gov/news/releases/ice-announces-another-30-day-extension-flexibility-rules-related-form-i-9-compliance>...”

DIGITAL DISCOVERY

Massachusetts Continuing Legal Education, Inc. • EXW MA-CLE 9-1

As computer use and e-commerce have exploded in recent years, so too has the need for experts who are able to reliably retrieve and preserve electronic evidence for litigation purposes. Increasingly, businesses create information electronically and never convert it to paper, a phenomenon accelerated in 2020 by the work-from-home policies and practices necessitated by the COVID-19 pandemic. Electronic discovery experts have become increasingly necessary in preserving, collecting, and producing electronic evidence and in analyzing and presenting such data at trial. Building a relationship with a skilled electronic discovery expert will enable a litigator to deal with requests for electronic documents without undue burden and cost, uncover helpful electronic evidence in the hands of adversaries and third parties, preserve and prepare electronic evidence for trial, and educate judge and jury at trial about the subject of electronic data and discovery. The best way to find a reliable...

"...Often, a question arises as to whether these "metadata" are really part of the underlying document and whether there is an obligation to produce them, particularly when the requesting party specifically requests certain metadata under Fed. R. Civ. P. 34(b)(1)(C), which provides that a requesting party "may specify the form or forms in which electronically stored information is to be produced."..."

"...Also addressed are prelitigation electronic data audits, duties to preserve electronic evidence, the use of electronic discovery techniques, motion practice, and preserving electronic evidence..."

"...In modern litigation, nearly all collections and productions begin with electronic data, because documents are routinely generated primarily in electronic form, because the cost and logistical burden of such productions can be streamlined, and because electronic production can provide more-useful information to the requesting party..."

"...Specifically addressing the limitations on production of electronically stored information, Rule 26(b)(2)(B) contemplates a two-step test for determining whether the requesting party should produce electronically stored information that is not reasonably accessible..."

Current awareness

COVID-19 roundup: Court closures and procedural changes

WESTLAW Insurance Daily Briefing • 2020 WL 5399597

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts.

"...Regulation..."

"...Regulation..."

"...Massachusetts..."

"...Massachusetts..."

COVID-19 roundup: Court closures and procedural changes

WESTLAW Insurance Daily Briefing • 2020 WL 5228761

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts.

"...Regulation..."

"...Regulation..."

"...Massachusetts..."

"...Massachusetts..."

COVID-19 roundup: Court closures and procedural changes

WESTLAW Insurance Daily Briefing • 2020 WL 5034515

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts.

"...Regulation..."

"...Regulation..."

"...Massachusetts..."

"...Massachusetts..."