Dear CAFL Appellate Panel Members:

The SJC and Appeals Court just issued new scheduling Orders. I’ll lay out the key provisions of both Orders first. Then, toward the end of this message, I’ll explain how they affect us. (You can, of course, just skip to that portion if you wish.)

Key Provisions of Appeals Court and SJC Orders. Let’s start with the Appeals Court Order, issued yesterday, because it affects us the most. That Order, paragraph II, states:

a. Prior deadlines.

Deadlines for filings in the Appeals Court that by operation of statute, court rule, standing order, or court order expired or will expire between March 16, 2020 and June 1, 2020 are hereby extended as provided in section (II)(b). This applies to:

1. Appellate briefs in all case types.

2. Status reports in all case types.

3. Responses or oppositions to motions. However, for any emergency matter, the court or a single justice thereof may require a response to be filed by an earlier date.

4. Motions required by the Standing Order Concerning Dismissal of Appeals and Reports in All Cases for Lack of Prosecution. The Appeals Court will not enter notices or orders pursuant to that standing order until after May 8, 2020.

5. Responses to show cause orders. The Appeals Court will not act on outstanding show cause orders until after May 8, 2020.

6. Mass. R. A. P. 27 motions.

7. Requests to docket civil appeals.

8. Notices of appeal in cases currently pending in the Appeals Court.

9. Petitions seeking relief under G. L. c. 231, § 118 (first par.) and any response to any petition under that section.

b. New deadlines.

1. Deadlines not governed by statute. Any filing deadline in the Appeals Court not governed by statute (e.g., appellate brief or status report) is extended to June 1, 2020. **The tolling provisions described in paragraph 12 of the Supreme Judicial Court’s April 27, 2020 order [below] are not applicable to non-statutory filing deadlines in the Appeals Court.** Non-statutory deadlines are not further tolled beyond June 1, 2020. However, the Appeals Court recognizes the COVID-19 pandemic has significantly limited many parties’ ability to prepare filings so further enlargements of non-statutory deadlines are available by motion. A motion to further enlarge a non-statutory deadline based on COVID-19 does not require a detailed description of particular circumstances.

2. Deadlines governed by statute. The new due date for any deadline for filing in the Appeals Court established by statute (e.g., G. L. c. 231, § 118, first par., petition) is to be determined by application of the tolling calculations in Paragraph 12 of the Supreme Judicial Court’s April 27, 2020 order.

(Emphasis added). The full Appeals Court scheduling Order is available here:

<https://www.mass.gov/doc/revised-notice-regarding-extension-of-deadlines-and-other-covid-19-procedures-in-the-appeals-0/download>

The Appeals Court referenced the new SJC scheduling Order, issued on Monday. The key paragraphs of the SJC Order are:

12. Deadlines set forth in statutes or court rules, standing orders, or guidelines. Unless otherwise ordered by the applicable court, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired or will expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020, and the new deadline in each instance is calculated as follows: determine how many days remained after March 16, 2020, until the original deadline, and that same number of days will remain as of June 1, 2020, until the new deadline. For example, if a rule set a thirty (30) day deadline and twelve (12) days remained after March 16 before that deadline was reached, then twelve (12) days will continue to remain as of June 1, before the new deadline is reached (i.e. June 15, because June 13 is a Saturday). If the thirty (30) day period commenced after March 16, then thirty (30) days remain as of June 1 before the new deadline is reached (i.e. July 1).

13. Court-ordered deadlines in particular cases. Unless otherwise specifically ordered by the applicable court, all deadlines established by a court in a particular case on or before March 16, 2020, that expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020. To calculate the new deadline, see the guidance in paragraph 12. Probation termination dates are not tolled by this provision.

The full SJC Order is available here:

<https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-updated-order-regarding-court-operations-under>

What the Orders Mean for Us. Three main take-aways:

* If your docketing, status report, or briefing deadline is/was between March 16 and June 1 – whether by operation of the Rules of Appellate Procedure or by order of the single justice – your new deadline is June 1. Don’t rely on the byzantine tolling exercise set forth in the SJC’s Order; it doesn’t apply. (Enlargements should be pretty easy to come by, but please ask for only the time that you need.)
* Note that applications for further appellate review (FAR) are made under Rule 27.1; they therefore fall under the SJC's Order, not the Appeals Court's Order.  FAR applications are thus subject to the SJC's tolling rules.
* If you have a single justice petition under G.L. c. 231, § 118, the 30-day deadline for filing is statutory – that is, the filing deadline is specifically laid out in § 118 itself, not in any Rule. Accordingly, the deadline is determined using the tolling rules in paragraph 12 of the SJC Order.
* Please remember that single justice petitions aren’t our only statutory appeal deadlines. While termination and guardianship appeals are Rules-based, not statutory, appeals of permanent custody adjudications under G.L. c. 119, § 26 are governed by the 30-day deadline in G.L. c. 119, § 27. (We get a few of these each year.) And appeals of permanency hearings under G.L. c. 119, § 29B are governed by that section’s 30-day deadline. (We get one each year.) Once the notices of appeal of permanent custody decrees and permanency hearings are timely filed, the Rules govern the rest of the appellate process, so docketing, report, and briefing deadlines in these appeals will be subject to the June 1 extension. But the SJC and Appeals Court Orders may give you extra time to file a notice of appeal in such cases.

I hope this is helpful. Feel free to email me if you have any questions. Or you can call and leave a message for the Appeals Court Clerk’s Office. They will usually get back to you by the next business day.

-Andy