



# MACDL

Massachusetts Association of  
Criminal Defense Lawyers

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May 31, 2019

Christine P. Burak  
Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

Re: Comments on Draft Order Governing Appeals from  
Convictions of Murder in the First Degree

Dear Ms. Burak:

On April 18, 2019, the Supreme Judicial Court requested comments on a draft "Order Governing Appeals from Convictions of Murder in the First Degree." The Court stated that the Order was "intended to help ensure that appeals in [First Degree Murder] cases are adjudicated without undue delay. The Order establishes timetables and regular conferences before a special master or single justice to promote the timely filing of motions for new trial and move the cases more efficiently to oral argument." The Massachusetts Association of Criminal Defense Lawyers (MACDL) provides the following comments regarding the Court's proposed Order.

MACDL is the only statewide association of lawyers in Massachusetts devoted exclusively to serving all segments of the defense bar. According to our mission statement, MACDL's mission is to preserve the adversary system of justice, maintain and foster independent and able criminal defense lawyers, and ensure justice and due process for people accused of crime.

MACDL is the Massachusetts affiliate of the National Association of Criminal Defense Lawyers and represents more than 1,000 experienced trial and appellate lawyers who are members of the Massachusetts Bar and who devote a substantial part of their practices to criminal defense. MACDL devotes much of its energy to identifying, and attempting to avoid or correct, problems in the Commonwealth's criminal justice system.

Whatever the Court's decision regarding the proposed Order, MACDL's members will need to represent their clients consistent with that decision. MACDL therefore has a strong interest in providing the Court with its perspective on this issue that derives from its members' experiences in defending cases on appeal involving First Degree Murder convictions.

MACDL supports and joins in the submission of the four attorneys—Don Bronstein, Esq., Chauncey Wood, Esq. (a MACDL Board member), Claudia Bolgen, Esq., and Elizabeth Billowitz, Esq.—invited by the Court to provide the perspective of the appellate defense bar. MACDL strongly encourages the Court to adopt their recommendations. MACDL writes separately to emphasize a particular point.

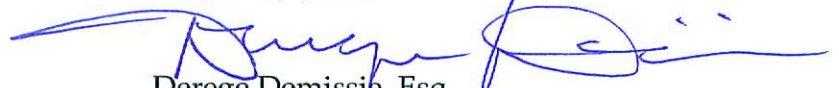
The proposed Order primarily, if not exclusively, addresses the actions of appellate defense counsel. The speed at which an appeal moves forward, however, is often also dependent on the actions of the Commonwealth as well as other factors outside of the control of appellate defense counsel. Are reasonable discovery requests by appellate defense counsel to complete the case record or investigate the case being accommodated by the particular district attorney's office? Are motions for expert funds—often requesting less than \$2,000, but having an importance in the case that is asymmetric to their size—to evaluate the often technically sophisticated and complex evidence in these cases being opposed?

MACDL believes that the problems identified by the Court in its proposed Order are systemic and that therefore the solutions should be as well. MACDL believes that an "open file" policy by the Commonwealth allowing access to any documents already turned over in discovery at the trial court level and a permissive application by the trial court of Mass. R. Crim. P. 30 (c) (4) for further discovery or expert funds in first degree murder cases would do more to shorten the time between the trial transcripts being completed and a new trial motion or direct appeal being filed than placing arbitrary deadlines on defense counsel.

MACDL also has concerns that the incentives created by the proposed Order may not further its goal of expediting appeals in these cases. Because the deadlines in the proposed Order—and the consequences of not meeting them—apply only to the defendant, the proposed Order creates incentives for the Commonwealth to take its time complying with reasonable requests for discovery or information, oppose motions for funds, or to just not cooperate at all. MACDL believes that the proposed Order should explicitly include consequences for delay by the Commonwealth, e.g., noncompliance or unreasonable delay by the Commonwealth constitutes the "good cause" necessary for additional time to prepare a new trial motion in a first degree murder case.

Thank you for providing this opportunity to bring our concerns to the Court's attention.

Very truly yours,

  
Derege Demissie, Esq.  
*President*