

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and
for said Commonwealth on the twenty-second day of February, in
the year two thousand and twenty-two:

present,

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
)	
<u>DAVID A. LOWY</u>)	
)	
)	
<u>ELSPETH B. CYPHER</u>)	
)	
)	
<u>SCOTT L. KAFKER</u>)	
)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
)	
<u>SERGE GEORGES, JR.</u>)	

ORDERED: That the Massachusetts Rules of Appellate Procedure
adopted by order dated July 1, 1973, as amended, to
take effect on July 1, 1974, are hereby amended as
follows:

Rule 4 By deleting Mass. R. A. P. 4 (b) (2) and inserting in
lieu thereof the following Mass. R. A. P. 4 (b) (2)
and (3):

(2) If a motion for a new trial is filed under
Massachusetts Rules of Criminal Procedure 25 (b) (2)
or 30 within 30 days of the verdict, finding of guilt,
judgment, adjudication, or imposition of sentence, the
period to appeal shall not terminate until 30 days

from entry of the order disposing of the motion. If a motion is filed for reconsideration within 30 days of entry of the order disposing of the motion, the period to appeal shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

(3) If a motion is filed for reconsideration within 30 days of an appealable order, judgment, or adjudication, the period to appeal from the decision for which reconsideration was sought shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

Rule 17 By deleting the first sentence of Mass. R. A. P. 17 (a) and inserting in lieu thereof the following first sentence:

A brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion, (2) when solicited by the appellate court, or (3) if the Commonwealth or its officer or agency is an amicus on the brief.

Rule 17 By deleting the word "indicate" in the second sentence of Mass. R. A. P. 17 (c) and inserting in lieu thereof the word "state".

Rule 17 By deleting Mass. R. A. P. 17 (c) (5) and inserting in lieu thereof the following Mass. R. A. P. 17 (c) (5):

(5) a declaration by all amicus curiae, other than the Commonwealth or its officer or agency, that states whether

(A) a party or a party's counsel authored the brief in whole or in part;

(B) a party or a party's counsel, or any other person or entity, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund the preparation or submission of the brief, and, if so, identifying each such person or entity; and

(C) the amicus curiae or its counsel represents or has represented one of the parties to the

present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal, and, if so, identifying the proceeding or transaction, its relevance to the present appeal, and the parties involved;

The amendments accomplished by this order shall take effect on April 1, 2022.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
)	
<u>DAVID A. LOWY</u>)	
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<u>ELSPETH B. CYPHER</u>)	
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<u>SCOTT L. KAFKER</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
)	
<u>SERGE GEORGES, JR.</u>)	

REPORTER'S NOTES

MASSACHUSETTS RULES OF APPELLATE PROCEDURE

Rule 4. Appeal - When Taken

Reporter's Notes--2022

Rule 4(b) was amended in 2022, by adding subdivision (b)(3), to reflect the common-law rule that the timely filing of a motion for reconsideration in a criminal case tolls the time period for a party to file a notice of appeal from a ruling on a motion filed under Rule 25(b)(2) or 30, or from another appealable order, judgment, or adjudication that is the subject of the motion for reconsideration. See *Commonwealth v. Lewis*, 57 Mass. App. Ct. 931, 931-932 (2003) (“timely motion to reconsider, generally one that is filed within thirty days of the action the moving party wants reconsidered, extends the time for filing a notice of appeal to thirty days after the motion to reconsider has been acted upon”), citing *Commonwealth v. Powers*, 21 Mass. App. Ct. 570, 573-574 (1986) and *Commonwealth v. Montanez*, 410 Mass. 290, 294 & n.4 (1991). See also *Commonwealth v. Jordan*, 469 Mass. 134, 147 n.24 (2014).

A timely-filed motion for reconsideration generally extends the time for filing a notice of appeal only for the appealable order, judgment, or adjudication for which reconsideration was sought. For example, if, five months after the verdict, the defendant moved for a new trial under Mass. R. Crim. P. 30, and the motion was denied, and then, within 30 days of that denial, moved for reconsideration, unsuccessfully, the defendant would have 30 days from the denial of the motion for reconsideration to appeal from the rulings on the Rule 30 motion and the motion for reconsideration, but not from the underlying verdict because more than 30 days had elapsed before the defendant filed the Rule 30 motion. On the other hand, if the defendant filed the Rule 30 motion within 30 days of the verdict, and filed a timely, but unsuccessful, motion for reconsideration, the defendant would have 30 days from entry of the order resolving the motion for reconsideration to appeal from: (1) the verdict; (2) the decision on the motion for a new trial; and (3) the ruling on the motion for reconsideration.

Consistent with the rule for civil cases, the addition of subdivision (b)(3) is not intended to provide a party with multiple opportunities to extend the time period to claim an appeal by filing repeated motions for reconsideration of the same appealable order, judgment, or adjudication. See Mass. R. A. P. 4(a)(2), Reporter's Notes (2013). The only circumstance when a motion for reconsideration extends the time for filing an appeal from an appealable order, judgment, or adjudication is when the motion is filed within 30 days of entry of the appealable order, judgment, or adjudication that was the subject of reconsideration. Any motion for reconsideration filed beyond that 30 day period has no tolling effect.

Rule 17. Brief of an Amicus Curiae

Reporter's Notes--2022

Rule 17(a) was amended in 2022 to clarify that if the Commonwealth, or any of its officers or agencies, is one of any number of individuals or organizations on the amicus brief, the brief may be filed as of right. This includes cases where the Committee for Public Counsel Services authors or joins the amicus brief. The Committee for Public Counsel Services is an agency of the Commonwealth. G.L. c. 211D, § 1. See *German v. Commonwealth*, 410 Mass. 445, 447 (1991) (describing CPCS as “a statutory agency of the Commonwealth”).

Rule 17(c) was amended to clarify that the declarations mandated by Rule 17(c)(5) are not required for the Commonwealth or its officer or agency, including the Committee for Public Counsel Services. Such declarations must be included for all non-Commonwealth amici, even if the brief is also joined by a Commonwealth officer or agency.

In addition, minor revisions to word choice were made for consistency and clarity. The revisions were not intended to change the substance of the rule.