

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and
for said Commonwealth on the eighth day of June, in the year two
thousand and sixteen:

present,

<u>HON. RALPH D. GANTS</u>)	Chief Justice
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<u>HON. FRANCIS X. SPINA</u>)	
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<u>HON. ROBERT J. CORDY</u>)	Justices
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<u>HON. MARGOT BOTSFORD</u>)	
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<u>HON. FERNANDE R.V. DUFFLY</u>)	
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<u>HON. BARBARA A. LENK</u>)	
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)	
<u>HON. GERALDINE S. HINES</u>)	

ORDERED: That the Massachusetts Rules of Criminal
Procedure adopted by order dated October 19, 1978, as amended,
to take effect on July 1, 1979, are hereby amended as follows:

Rule 15	By deleting the current Rule 15 and inserting in lieu thereof the new Rule 15 attached hereto.
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Mass. R. Crim. P. 15. Interlocutory Appeal

(Applicable to District Court and Superior Court)

(a) Right of Interlocutory Appeal.

(1) Right of Appeal Where Pretrial Motion to Dismiss or for Appropriate Relief Granted. The Commonwealth shall have the right to appeal to the Appeals Court a decision by a judge granting a motion to dismiss a complaint or indictment or a motion for appropriate relief made pursuant to the provisions of Rule 13(c).

(2) Right of Appeal Where Motion to Suppress Evidence Determined. A defendant or the Commonwealth shall have the right and opportunity to apply to a single justice of the Supreme Judicial Court, in the form and manner prescribed by a standing order of that court, for leave to appeal an order determining a motion to suppress evidence prior to trial. If the single justice determines that the administration of justice would be facilitated, the justice may grant that leave and may hear the appeal or may order it to the full Supreme Judicial Court or to the Appeals Court for determination.

(3) (Reserved)

(4) Probable Cause Hearings. No interlocutory appeal or report may be taken of matters arising out of a probable cause hearing.

(b) Procedural Requirements.

(1) Time for Filing Appeal. An appeal under Rule 15(a) (1) shall be taken by filing a notice of appeal in the trial court within thirty days of the date of entry of the order being appealed. An application for leave to appeal under Rule 15(a) (2) shall be made by filing within thirty days of the date of entry of the order being appealed, or such additional time as either the trial judge or the single justice of the Supreme Judicial Court shall order, (a) a notice of appeal in the trial court, and (b) an application to the single justice of the Supreme Judicial Court for leave to appeal.

(2) Record. The record for an interlocutory appeal shall be defined and assembled pursuant to Massachusetts Rule of Appellate Procedure 8.

(3) Findings. The judge shall make all findings of fact relevant to the appeal or the application for leave to appeal

within the period specified in Rule 15(b)(1) for filing the notice of appeal.

(c) Determination of Motions. Any motion the determination of which may be appealed pursuant to this rule shall be decided by the judge before the defendant is placed in jeopardy under established rules of law.

(d) Costs upon Appeal. If an appeal or application therefor is taken by the Commonwealth, the appellate court, upon the written motion of the defendant supported by affidavit, shall determine and approve the payment to the defendant of his or her costs of appeal together with reasonable attorney's fees to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.

(e) Stay of the Proceedings. If the trial court issues an order which is subject to the interlocutory procedures herein, the trial of the case shall be stayed and the defendant shall not be placed in jeopardy until interlocutory review has been waived or the period specified in Rule 15(b)(1) for instituting interlocutory procedures has expired. If an appeal is taken or an application for leave to appeal is granted, the trial shall be stayed pending the entry of a rescript from or an order of the appellate court. If an appeal or application therefor is taken by the Commonwealth, the defendant may be released on personal recognizance during the pendency of the appeal.

The amendments accomplished by this order shall take effect
on August 1, 2016.

ORDERED:

<u>HON. RALPH D. GANTS</u>)	Chief Justice
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<u>HON. FRANCIS X. SPINA</u>)	
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<u>HON. ROBERT J. CORDY</u>)	Justices
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<u>HON. GERALDINE S. HINES</u>)	

REPORTER'S NOTES TO RULE 15 2016 AMENDMENTS

The 2016 amendments to Rule 15 respond to the Supreme Judicial Court's decision in *Commonwealth v. Jordan*, 469 Mass. 134 (2014), a case in which the Commonwealth sought interlocutory review of a suppression order through a late-filed notice of appeal and application for leave to appeal. In agreeing to consider the appeal in spite of the late filings, the Court acknowledged that the procedures governing the timeliness of such appeals lacked clarity, *id.* at 145, a problem that the Court addressed by announcing specific procedures prospectively applicable to Rule 15 filings seeking leave to appeal suppression orders. *Id.* at 147-148. In addition to this clarification of Rule 15 filing procedures, the Court expressed concern that then-Rule 15(b)(1)'s ten-day filing period for such appeals might be insufficient. *Id.* at 149-150. As discussed below, amended Rule 15 implements the procedural framework mandated in *Jordan* and expands to thirty days the time for filing a notice of appeal and an application for leave to appeal from an order determining a motion to suppress evidence. Amended Rule 15 also includes non-substantive changes that clarify its mandate and update it to reflect current law.

Rule 15(a)(1) Right of Appeal Where Pretrial Motion to Dismiss or for Appropriate Relief Granted. Amended Rule 15(a)(1) reflects longstanding case law, making it clear that the Appeals Court is the court to which the Commonwealth may appeal the allowance of a motion to dismiss or of a motion for appropriate relief other than to suppress evidence. See *Commonwealth v. Friend*, 393 Mass. 310, 314 (1984) (Commonwealth's appeal from allowance of a motion to dismiss must be to the Appeals Court).

Rule 15(a)(2) Right of Appeal Where Motion to Suppress Evidence Determined. Amended Rule 15(a)(2) implements the late-filing procedures mandated by the Supreme Judicial Court in *Commonwealth v. Jordan*, 469 Mass. 134 (2014) for interlocutory appeals of an order determining a motion to suppress. Former Rule 15(a)(2) did not specify what showing an applicant for such relief must make concerning the timeliness of the necessary filings, hampering the efforts of single justices to be consistent in addressing the threshold issue of whether the notice of appeal and application for leave to appeal were timely filed and, if not, whether they should nevertheless be considered. See *Jordan*, 469 Mass. at 145 (acknowledging a "lack of clarity" in the single justices' application of procedural rules governing timeliness of Rule 15(a)(2) filings).

Amended Rule 15(a)(2) cures this deficiency, incorporating by reference the Supreme Judicial Court's standing order prescribing with specificity the form and manner for making an application to a single justice for leave to appeal a suppression order. This standing order, Supreme Judicial Court Order Regarding Applications to A Single Justice Pursuant to Mass. R. Crim. P. 15(a)(2) (2016), in effect codifies *Jordan*'s procedural framework for addressing timeliness issues, including a requirement that an application for leave to appeal a suppression order contain an affirmative representation that the application and notice to appeal are, or are not, timely under Rule 15(b)(1). If the appeal or application is untimely, the standing order requires that the application be accompanied by a motion to enlarge time for filing, supported by an affidavit providing "in meaningful detail the reasons for the delay." See Supreme Judicial Court Order Regarding Applications to A Single Justice Pursuant to Mass. R. Crim. P. 15(a)(2), § (a)(7) (2016). See also *Commonwealth v. Jordan*, 469 Mass. 134, 147-148 (2014) (setting out

“Rule 15 procedure in future cases”).

The purpose of this provision is to permit the single justice to whom the application is made to decide (1) whether the application satisfies Rule 15’s timing requirements, and, if it does not, (2) whether the application should nevertheless be considered, before proceeding to the merits of the application and, if appropriate, the appeal. This threshold determination by the single justice is intended to be final, foreclosing further consideration of this procedural issue by the full court or the Appeals Court if the single justice refers the appeal to either for determination. See *Jordan*, 469 Mass. at 148 (2014).

Rule 15(a)(3) Right of Appeal Where Transfer of Delinquency Proceeding is Denied.

Rule 15(a)(3), permitting the Commonwealth to appeal a judge’s denial of a requested transfer of a delinquency proceeding to Superior or District Court for criminal prosecution, is deleted. G. L. c. 119, § 61, which provided for such transfers, was repealed, making Rule 15(a)(3) obsolete. This section is reserved for possible amendment to reflect current law.

Rule 15(b)(1) Time for Filing Appeal. Rule 15(b)(1), as amended, increases the time to file a notice of appeal and an application for leave to appeal a suppression order to thirty days, clarifying that the starting point for that time period is the date that the order being appealed is entered by the lower court. This filing period is meant to balance the need for adequate time to consider and prepare an application for interlocutory review of a suppression order against the potential for unnecessary, widespread delays in resolving the many criminal cases which involve suppression orders. Thirty days, the filing period applicable to other interlocutory appeals under Rule 15 and presumptively applicable to all appeals in criminal cases, see Rule 4(b), Mass. R. A. P., as amended, 431 Mass. 1601 (2000), should ordinarily suffice. However, if in a particular case a party can demonstrate with specificity that thirty days is insufficient, the rule provides for leave to seek additional time from either the trial judge or single justice. If there is a timely motion to reconsider the suppression order in question, the thirty-day time period for filing an application for interlocutory review does not commence until the trial court enters its order deciding the motion to reconsider. See *Jordan*, 469 Mass. at 147 n. 24.

The SJC’s standing order incorporated in amended Rule 15(a)(2) provides that the party opposing interlocutory appeal of the suppression order may file a memorandum in opposition to that application within fourteen days after the application for leave to appeal is entered. Supreme Judicial Court Order Regarding Applications to A Single Justice Pursuant to Mass. R. Crim. P. 15(a)(2), § (c) (2016). The order further permits the single justice to extend or shorten the time to file such opposition and provides that a party deciding not to file an opposition must serve notice of that intention within the time allowed for filing the opposition. *Id.*

Rule 15(b)(2) Record; Rule 15(b)(3) Findings. Rule 15(b)(2) and Rule 15(b)(3) contain the provisions of former Rule 15(b)(2), renumbered to separate former Rule 15(b)(2) into two parts, Rule 15(b)(2) providing for definition and assembly of the record and Rule 15(b)(3) requiring timely findings by the trial judge.