

RULE 30 OF THE SUPPLEMENTAL RULES OF THE PROBATE AND FAMILY COURT

Date Submitted for Approval: August 1, 2019

Date Approved & Promulgated by the Supreme Judicial Court: October 4, 2019

Effective Date: November 1, 2019

Rule 30. Dismissal of Abandoned Appeals

If the appellant has failed to (i) file the transcript of the proceedings or the designated portions thereof or the statement of certification within the time required by Rule 8(b)(1) and Rule 9(d) of the Massachusetts Rules of Appellate Procedure (unless such time shall previously have been enlarged as permitted by Rule 10(c)); (ii) docket the appeal within the time required by Rule 10(a)(1) of the Massachusetts Rules of Appellate Procedure (unless such time shall previously have been enlarged or the late docketing allowed as permitted by Rule 10(a)(3)); or (iii) failed to file the transcript of the proceedings or the designated portion thereof within six (6) months of filing the statement of certification, the register shall send written notice by first class mail that the appeal will be dismissed for lack of prosecution to the attorney of record for each party, or to the party at his last known address if he is not represented by an attorney. A copy of this rule shall accompany said written notice. The sending of every notice required by this rule shall be noted on the docket.

Fourteen (14) days after the date of such notice, the register shall forthwith dismiss such appeal for lack of prosecution and shall note said dismissal on the docket, unless the register receives a) a motion to enlarge to a date certain set forth therein the time for complying with this rule and the requirements of said Rule 8(b)(1) and Rule 9(d) and/or Rule 10(a)(1) or (3) which has been marked for hearing and b) an affidavit of the movant which shall set forth all the facts which such movant wishes to have considered by the court which will act on such motion in accordance with the provisions of this rule and Rule 10(c) .

Adopted July 18, 1988, effective August 1, 1988; amended October 27, 1999, effective January 1, 2000; amended December 14, 2011, effective January 2, 2012; amended October 4, 2019, effective November 1, 2019.

Reporter's notes- 2000

Rule 30 was amended to facilitate the dismissal of abandoned appeals. Pursuant to Rule 9(c)(2) of the Massachusetts Rules of Appellate Procedure, the appellant in a civil case shall

deliver to the clerk of the lower court either a transcript of those portions of the transcript of the lower court proceedings which the appellant deems necessary for determination of the appeal or a signed statement certifying that the appellant has ordered such portions from the court reporter. Upon receiving the transcript, the appellant is to deliver it forthwith to the clerk of the lower court.

Under the prior version of rule 30, the appeal could not be dismissed for lack of prosecution if the appellant filed a signed statement certifying that they have ordered the transcript, despite the fact that the transcript is never produced. With the amended version of rule 30, if the appellant fails to file the transcript within six (6) months of filing the statement of certification, the appeal shall be dismissed.

Another problem with the prior version of the rule is that it allowed the appellant to stop the dismissal by filing a motion to enlarge. However, the rule required no further action on the motion. The amendment to rule 30 requires that the motion to enlarge be marked for hearing.

Rule 30 was also amended to reference Massachusetts Rule of Appellate Procedure 8(b)(3) in addition to rule 9(c) in order to include electronically recorded proceedings.

Reporter's notes- 2019

Rule 30 was amended to correct the prior reference to Rule 8(b)(3) of the Massachusetts Rules of Appellate Procedure to state now Rule 8(b)(1), and the prior reference to Rule 9(c) of the Massachusetts Rules of Appellate Procedure to state now Rule 9(d), as a result of amendments to the Massachusetts Rules of Appellate Procedure effective March 1, 2019.