

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RODERICK L. IRELAND

Chief Justice

1. Court Submitting Rules for Approval:

District Court Department, with agreement of the Boston Municipal Court Department

2. Date Rules Submitted for Approval:

February 15, 2013

3. Date Approved and Promulgated by the Supreme Judicial Court:

March 22, 2013

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Rules 4(a) and Rule 8C(d), District/Municipal Courts Rules

for Appellate Division Appeal, as attached.

Effective date - May 1, 2013

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



Lynda M. Connolly
Chief Justice

Trial Court of the Commonwealth District Court Department

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February 15, 2013

Honorable Robert J. Cordy
Chair, SJC Rules Committee
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Re: Proposed Amendments to District/Municipal Courts Rules for Appellate Division Appeal

Dear Justice Cordy:

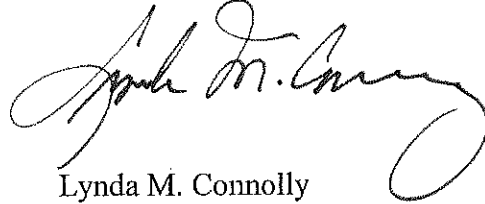
The following are proposed amendments to the District/Municipal Courts Rules for Appellate Division Appeal. The amendments are technical, making only minor changes. They are submitted with the agreement of the Boston Municipal Court.

Rule 4(a) of the Appellate Division Rules addresses postjudgment motions that toll the time period for appeals. The amendment changes Rule 4(a) to include, among motions to extend the time for filing a notice of appeal, a Rule 60 motion that is served within ten days after entry of judgment. This amendment comports with a pending amendment to Rule 4(a) of the Massachusetts Rules of Appellate Procedure. A proposed amendment to the second paragraph of Rule 4(a) replaces the citation to the District/Municipal Court Rules of Civil Procedure, which were repealed in 1996, with a citation to the Massachusetts Rules of Civil Procedure, which now govern civil proceedings in the District Court and Boston Municipal Court. Finally, proposed revisions are made to the Commentary to Appellate Division Rule 4(a) that explain the purpose of the amendments.

Rule 8C(d) of the Appellate Division Rules addresses the use of stenographic records in appeals. A proposed amendment deletes the citation to the repealed District/Municipal Court Rules of Civil Procedure, and replaces it with a citation to the Massachusetts Rules of Civil Procedure. An explanatory revision is also made to the Commentary.

I respectfully request that the Supreme Judicial Court approve and promulgate the proposed amendments pursuant to G.L. c. 213, § 3.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynda M. Connolly". The signature is fluid and cursive, with a large loop at the end.

Lynda M. Connolly
Chief Justice of the District Court

cc: Hon. Robert A. Mulligan, Chief Justice of the Trial Court
Hon. Charles R. Johnson, Chief Justice, Boston Municipal Court
Hon. Raymond G. Dougan, Jr., Boston Municipal Court
Hon. Paul F. LoConto
Christine Burak, Esq., Supreme Judicial Court
Christopher J. Connolly, Esq., Boston Municipal Court
Suzanne Hurley, Esq., District Court Appellate Division

RULE 4. APPEAL — WHEN TAKEN

(a) Time for Filing.

The notice of appeal required by Rule 3, together with the required filing fee, shall be filed with the clerk of the trial court within ten days after the date of the entry of the judgment in the case being appealed. If a notice of appeal and filing fee is mistakenly filed in the Appellate Division, the Appellate Division shall note the date on which they were received and transmit them to the clerk of the trial court from which the appeal was taken and they shall be deemed filed in the trial court on the date so noted. If a notice of appeal and filing fee are timely filed by a party, any other party may file a notice of appeal and filing fee within fourteen days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

If a post-judgment motion under the ~~District/Municipal Court Rules of Civil Procedure~~ Massachusetts Rules of Civil Procedure is timely served or filed in the trial court, as the case may be, by any party (1) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) to alter or amend a judgment under Rule 59 ~~to alter or amend judgment~~ or for relief from judgment under Rule 60, however titled, if either motion is served within ten days after entry of judgment; or (3) under Rule 59 for a new trial, the ten-day time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(b) [Reserved].

(c) Extension of Time for Filing Notice of Appeal.

Upon a showing of excusable neglect or other good reason, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed ten days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired. A request for an extension shall be made by motion with such notice as the trial court shall deem appropriate, and in no event shall the court permit the filing of a notice of appeal later than 180 days after entry of the judgment or post-judgment order of which appeal is sought.

~~Adopted effective July 1, 1994~~ Amended effective mm/dd/2013.

Commentary

This rule differs from Mass. R. A. P. 4 in that the notice of appeal (and filing fee) must be filed within ten, rather than thirty, days after entry of judgment, and this same time limit applies when the Commonwealth or an office or agency thereof is a party.

It should be noted that though this time limit is a brief one, the filing of the notice of appeal is essentially just “a foot in the door.” Further time periods apply to allow the appellant to select and pursue the appropriate method of appeal. And extension of the ten-day period is allowable under section (c).

The last paragraph of section (a) of the rule provides the time limit for appeal when post-judgment motions are filed. A 2013 amendment to the last paragraph of section (a) added a reference in item (2) to Rule 60 motions, if served within ten days after entry of judgment, as extending the time period to claim an appeal from the underlying judgment. This conforms with a 2013 amendment to Mass. R. A. P. 4(a), which similarly recognized that a motion for relief from judgment under Rule 60 extends the time period to file a notice of appeal.

Section (c) of the rule varies from its Mass. R. A. P. counterpart by allowing the court to grant an extension of the time for filing for no more than ten, rather than thirty, days. It also imposes a maximum limit of 180 days to limit multiple successive extensions and the suspension of the time limits under Rules 2 and 14(b).

A 2013 amendment to this rule deleted the reference to the District/Municipal Court Rules of Civil Procedure, which were repealed in 1996, and replaced it with a reference to the Massachusetts Rules of Civil Procedure, which now govern civil proceedings in the District Court.

Rule 8C

METHOD OF APPEAL: APPEAL ON THE RECORD OF PROCEEDINGS

(d) Stenographic Record Available; Duty of Appellant; Notice to Appellee. A stenographic record is one made with the permission of the trial court pursuant to ~~District/Municipal Courts Rules of Civil Procedure 80(a)~~ Massachusetts Rules of Civil Procedure 80(c) by a stenographer who, upon agreement of the parties, has been approved and designated as the “reporter” for that case by the trial judge.

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Adopted effective July 1, 1994 Amended effective mm/dd/2013.

Commentary

Section (d) provides the procedure to be followed in the unusual event that the proceedings were recorded by a courtapproved stenographer. It differs from the cognate rule in the Mass. R. A. P. (Rule 8(b)(1)) by measuring time limits from the filing of the “Appeal on the Record of Proceedings” and by allowing the court to decide what portions to transcribe if there is a dispute and impose terms and costs thereon. A 2013 amendment to this rule deleted the citation in section (d) to the District/Municipal Court Rules of Civil Procedure, which were repealed in 1996, and replaced it with a citation to the Massachusetts Rules of Civil Procedure, which now govern civil proceedings in the District Court.