

# MASSACHUSETTS RULES OF APPELLATE PROCEDURE

## Rule 4: Appeal - When Taken

### DRAFT Reporter's Notes--2021

#### Proposed Reporter's Note to Mass. R. A. P. 4(b)

Rule 4(b) was amended in 2021, 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 days has no tolling effect.

