

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.

Kimberly S. Budd
Chief Justice

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1. Court Submitting Rules for Approval:
Superior Court
 2. Date Rules Submitted for Approval:
December 10, 2024
 3. Date Approved & Promulgated by the Supreme Judicial Court:
April 1, 2025
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendment to Superior Court Rule 64: Appellate Division, as described in the enclosed letter dated December 10, 2024 from Chief Justice Michael D. Ricciuti.
 5. Effective Date:
May 1, 2025

(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.)



THE TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT

Suffolk County Courthouse
Three Pemberton Square, 13th Floor
Boston, MA 02108

Michael D. Ricciuti
Chief Justice

Elaina M. Quinn
Deputy Court Administrator

December 10, 2024

Hon. Frank M. Gaziano
Chair of the Rules Committee
Supreme Judicial Court
John Adams Courthouse, Suite 2200
One Pemberton Square
Boston, MA 02108

RE: Request to Amend Superior Court Rule 64: Appellate Division.

Dear Justice Gaziano:

I submit for approval by the Supreme Judicial Court a proposal to amend Superior Court Rule 64: Appellate Division. The amendment, which is modeled after Mass. R. Crim. P. 29(a)(1), provides a 60-day timeframe within which the Appellate Division may reconsider a resentencing decision. It was drafted in light of *Commonwealth v. Martin*, 492 Mass. 74, 81 n.13 (2003) ("the Superior Court is authorized to amend Rule 64 . . . to provide a short period of time to permit the Appellate Division to correct errors" in resentencing decisions).

The justices of the Superior Court preliminarily approved this proposal at the Court's Business Meeting on December 1, 2023. The proposal was published for comment on the Superior Court's website and through Massachusetts Lawyers Weekly, on December 4, 2023. The Court set a deadline of January 15, 2024, for submitting comments. The Superior Court Rules and Forms Committee reviewed comments and recommended adoption of the proposed amendment as published, with no changes. At the Court's Business Meeting on December 6, 2024, the justices voted to submit the amendment to the SJC for approval.

The Superior Court requests that the SJC approve this proposed amendment **effective March 1, 2025**. I would be happy to discuss any questions you may have or provide any additional information. Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael D. Ricciuti".

Michael D. Ricciuti

cc: Chief Justice Heidi E. Brieger
Hon. Thomas J. Perrino, Chair, Superior Court Rules and Forms Committee
Christine Burak, Esq., Secretary of the Rules Committee

Superior Court Rule 64: Appellate Division. Procedure and Forms
(Applicable to criminal cases)

Appeals to the appellate division, under G.L. Chapter 278, as amended, shall be signed by the person sentenced, on forms herein established to be furnished by the clerk.

Upon the imposition of a sentence which may be reviewed, the clerk shall forthwith advise the person sentenced of his right, within ten days to appeal to the appellate division for a review of the sentence or sentences imposed, notwithstanding that the execution of such sentence or sentences is stayed pending appeal or suspended with a term of probation, and shall make an entry on the docket that the person has been so advised.

The clerk shall forthwith notify the justice who imposed the sentence, of any appeal, and likewise shall notify the appellate division of any appeal.

If new process issues as a result of action by the appellate division, it shall recite the original sentence, sentences or disposition and set forth any amendment thereof.

The clerk of the appellate division shall send notice of the final action by the appellate division to the appellant, the superintendent of the correctional institution in which the appellant is confined, the clerk of the court in which judgment was rendered, the justice who imposed the sentence appealed from and the chief justice.

The appellate division shall hear appeals for the review of sentences only in those cases in which a claim of appeal has been filed within ten days after the date of the imposition of sentence.

Notwithstanding withdrawal of counsel's appearance for other purposes, counsel representing a defendant at sentencing shall continue to do so in any appeal to the Appellate Division of the Superior Court, unless (a) specifically excused by the court, or (b) successor counsel enters an appearance with the Appellate Division.

The appellate division, upon its own motion, or on written motion of the prosecutor, filed within sixty days of a resentencing, may revise or revoke any resentence if the appellate division determines that any part of the resentence was illegal.

The forms for appeal under the provisions of G.L. Chapter 278, Section 28B, shall be as follows:

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