

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the seventeenth day of December, in the year two thousand and eight :
present,

HON. MARGARET H. MARSHALL)	
)	
HON. RODERICK L. IRELAND)	
)	
HON. FRANCIS X. SPINA)	Justices
)	
HON. JUDITH A. COWIN)	
)	
HON. ROBERT J. CORDY)	
)	
HON. MARGOT BOTSFORD)	

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 14: By inserting in rule 14(d)(2) the following after the second appearance of the word "declaration": ,
except that a computer assisted real time translation, or its functional equivalent, made to assist a deaf or hearing impaired person, that is not transcribed or permanently saved in electronic form, shall not be considered a statement

Rule 28: By inserting the new Rule 28(e) attached hereto.

The amendments accomplished by this order shall take effect on April 1, 2009.

<u>MARGARET H. MARSHALL</u>)	
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<u>RODERICK L. IRELAND</u>)	
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)	
<u>FRANCIS X. SPINA</u>)	Justices
)	
<u>JUDITH A. COWIN</u>)	
)	
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<u>ROBERT J. CORDY</u>)	
)	
)	
<u>MARGOT BOTSFORD</u>)	

RULE 28 (e) – FILING A CASE

(e) Filing. The court may file a case after a guilty verdict or finding without imposing a sentence if the defendant and the Commonwealth both consent. With the consent of both parties, the judge may specify a time limit beyond which the case may not be removed from the file, and may specify any events that may cause the case to be removed from the file. The defendant shall file a written consent with the court as to both the filing of the case and any time limit or events regarding removal from the file. Prior to accepting the defendant's consent, the court shall inform the defendant on the record in open court:

- (i) that the defendant has a right to request sentencing on any or all filed case(s) at any time;
- (ii) that subject to any time limit imposed by the court, the prosecutor may request that the case be removed from the file and sentence imposed if a related conviction or sentence is reversed or vacated or upon the prosecutor's establishing by a preponderance of the evidence either that the defendant committed a new criminal offense or that an event occurred on which the continued filing of the case was expressly made contingent by the court; and
- (iii) that if the case is removed from the file the defendant may be sentenced on the case.

In sentencing the defendant after the removal of a case from the file, the court shall consider the over-all scheme of punishment employed by the original sentencing judge.