

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.

RALPH D. GANTS
Chief Justice

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1. Court Submitting Rules for Approval:
Superior Court
 2. Date Rules Submitted for Approval:
December 13, 2019
 3. Date Approved & Promulgated by the Supreme Judicial Court:
March 5, 2020
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendment to Superior Court 64, as described in the enclosed letter from Chief Justice Judith Fabricant.
 5. Effective Date:
April 1, 2020
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(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.)



COMMONWEALTH OF MASSACHUSETTS
THE SUPERIOR COURT
THREE PEMBERTON SQUARE
BOSTON, MA 02108

JUDITH FABRICANT
CHIEF JUSTICE

TELEPHONE
617-788-7304

December 13, 2019

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 for Amendment to Superior Court Rule 64

Dear Justice Gaziano:

I submit for approval by the Supreme Judicial Court a proposed amendment to Superior Court Rule 64: Appellate Division, Procedure and Forms.

The justices of the Superior Court gave preliminary approval to the proposed amendment at the Court's semi-annual business meeting on April 27, 2019. The proposal was posted for comment on the Superior Court's website on May 20, 2019, and notice was sent to Massachusetts Lawyers Weekly on the same day. The Court set a deadline of June 21, 2019, for submitting comments. No comments on the proposed amendment were received. The justices then gave final approval to the amendment at the Court's business meeting on December 6, 2019, and voted to submit the proposal to the SJC for its approval.

The amendment comes in response to the change in the Massachusetts Rules of Appellate Procedure that eliminated the requirement of counsel's filing a motion to withdraw, in favor of filing a notice of withdrawal, removing the trial judge's opportunity to condition withdrawal on trial counsel's remaining in the case for purposes of a sentence appeal to the Appellate Division of the Superior Court. The amendment to Rule 64 would add the following language, which appears in bold on the document accompanying this letter:

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 Superior Court requests that the SJC approve this proposed rule change **effective March 1, 2019**. 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 "Judith Fabricant".

Judith Fabricant

cc: Chief Justice Paula M. Carey.
Hon. Thomas F. McGuire, Jr., Chair, Superior Court Rules and Forms Committee
Christine Burak, Esq., Secretary of the Rules Committee

Proposed Amendment (new language in boldface)

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.

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