

PROPOSED AMENDMENTS TO APPELLATE DIVISION RULES 3(c) AND 3(d)
REDLINED VERSION

RULE 3. APPEAL—HOW TAKEN

...

(c) Content of the Notice of Appeal

The notice of appeal shall limit the scope of the appeal and shall contain:

- (1) a designation of the party or parties taking the appeal,
- (2) a concise statement of the issues of law presented for review, and,
- (3) the judgment, ruling, finding, decision or part thereof being appealed, ~~and,~~
- (4) ~~in the case of rulings, a copy of the motion, request for ruling or proof of evidence giving rise to such ruling, if any;~~
- (5) ~~the notice of appeal may also include a request that the clerk order a cassette copy of the electronic recording of the proceedings, set forth on the required form and accompanied by the required fee.~~

The statement of issues of law required in section (c)(2), above, shall not prevent the statement of additional or alternative issues for appeal as provided in Rule 8C, below.

(d) Initial Duties of the Clerk

~~Upon receipt of a timely filed notice of appeal that includes a request for a cassette copy of the electronic recording of the proceedings and the fee therefor, the clerk of the trial court shall forthwith order such cassette copy and shall notify the requesting party immediately upon its availability.~~

Commentary (2020)

Rule 3(c)(4), which required the notice of appeal to contain, in the case of an appeal from a ruling, “a copy of the motion, request for ruling or proof of evidence giving rise to such ruling,” was deleted.

Rule 3(c)(5), which allowed an appellant to request in its notice of appeal the trial court clerk to produce a cassette copy of an electronically recorded proceeding, was deleted. Rule 3(d), regarding the trial court clerk’s duty to order the cassette copy upon request in the appellant’s

notice of appeal, was also deleted. The District Court and Boston Municipal Court no longer produce the audio recording of an electronically recorded proceeding on cassette or compact disc. The procedure for requesting the audio recording of an electronically recorded proceeding is described in Rule 8C.

Commentary (1994)

This rule governs the first steps an appellant must take. An appellant may decide which of the three types of appeal to select under Rules 8A, 8B or 8C after the notice of appeal has been filed.

This rule follows Mass. R.A.P. 3 with appropriate changes to refer to the Appellate Division. Also, the filing of the appropriate filing fee is added as a requisite of claiming appeal. Express references are also made to the rules governing the method of filing and service.

A major difference between this rule and Mass. R.A.P. 3 is that this rule requires the filing party to serve a copy of the notice of appeal on the other party or parties. This duty is left to the clerk under Mass. R.A.P. 3(d) .

The second paragraph of section (a) is identical to its counterpart in Mass. R.A.P. 3(a) except that reference is made to Dist./Mun.Cts.R.Civ.P. 46. Note that under the terms of the latter no objection is needed to preserve for appeal rulings made by the court in response to requests for rulings under Dist./Mun.Cts.R.Civ.P. 64A.

Section (c) of Rule 3 is significantly different from its Mass.R.A.P. counterpart. The major differences involve the requirement of specificity when a particular ruling is being appealed and the option of including a request for a cassette copy of the tape recording of the proceedings. If the method of appeal chosen by the appellant is the one provided by Rule 8C, the appellant will not be limited to the issues set forth in the notice of appeal under this rule. Rather the issues for appeal will be those specified in the appendix to the appellant's brief. See Rule 18(a).

Section (d) of the rule sets out the duty of the court clerk when a request for a tape cassette is included in the notice of appeal.