

**Supreme Judicial Court
Standing Advisory Committee on the
Rules of Criminal Procedure**

Proposed amendments to Rules 15, 25 and 30

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[Current text of Mass. R. Crim. P. 15]

Rule 15. Interlocutory Appeal

(a) Right of interlocutory appeal

(1) Right of appeal where pretrial motion to dismiss or for appropriate relief granted

The Commonwealth shall have the right to appeal to the Appeals Court a decision by a judge granting a motion to dismiss a complaint or indictment or a motion for appropriate relief made pursuant to the provisions of Rule 13(c).

(2) Right of appeal where motion to suppress evidence determined

A defendant or the Commonwealth shall have the right and opportunity to apply to a single justice of the Supreme Judicial Court, in the form and manner prescribed by a standing order of that court, for leave to appeal an order determining a motion to suppress evidence prior to trial. If the single justice determines that the administration of justice would be facilitated, the justice may grant that leave and may hear the appeal or may order it to the full Supreme Judicial Court or to the Appeals Court for determination.

(3) Right of appeal where delinquency defendant discharged

The Commonwealth shall have the right to appeal to the Appeals Court a decision by a judge discharging a person pursuant to G. L. c. 119, § 72A.

(4) Probable cause hearings

No interlocutory appeal or report may be taken of matters arising out of a probable cause hearing.

(b) Procedural requirements

(1) Time for filing appeal

An appeal under Rule 15(a)(1) shall be taken by filing a notice of appeal in the trial court within thirty days of the date of entry of the order being appealed. An application for leave to appeal under Rule 15(a)(2) shall be made by filing within thirty days of the date of entry of the order being appealed, or such additional time as either the trial judge or the single justice of the Supreme Judicial Court shall order, (a) a notice of appeal in the trial court, and (b) an application to the single justice of the Supreme Judicial Court for leave to appeal.

(2) Record

The record for an interlocutory appeal shall be defined and assembled pursuant to Massachusetts Rule of Appellate Procedure 8.

(3) Findings

The judge shall make all findings of fact relevant to the appeal or the application for leave to appeal within the period specified in Rule 15(b)(1) for filing the notice of appeal.

(c) Determination of motions

Any motion the determination of which may be appealed pursuant to this rule shall be decided by the judge before the defendant is placed in jeopardy under established rules of law.

(d) Costs upon appeal

If an appeal or application therefor is taken by the Commonwealth, the appellate court, upon the written motion of the defendant supported by affidavit, shall determine and approve the payment to the defendant of his or her costs of appeal together with reasonable attorney's fees to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.

(e) Stay of the proceedings

If the trial court issues an order which is subject to the interlocutory procedures herein, the trial of the case shall be stayed and the defendant shall not be placed in jeopardy until interlocutory review has been waived or the period specified in Rule 15(b)(1) for instituting interlocutory procedures has expired. If an appeal is taken or an application for leave to appeal is granted, the trial shall be stayed pending the entry of a rescript from or an order of the appellate court. If an appeal or application therefor is taken by the Commonwealth, the defendant may be released on personal recognizance during the pendency of the appeal.

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(d) Costs upon appeal

If an appeal ~~or application therefor~~ is taken by the Commonwealth, the appellate court shall award the defendant reasonable attorney's fees upon a request pursuant to Massachusetts Rule of Appellate Procedure 25 unless special circumstances would render such an award unjust. If an application taken by the Commonwealth under Rule 15(a)(2) is denied, a single justice of the Supreme Judicial Court shall award the defendant reasonable attorney's fees and costs upon the defendant's written application filed within 14 days of the denial of leave to appeal, unless special circumstances would render such an award unjust. ~~upon the written motion of the defendant supported by affidavit, shall determine and approve the payment to the defendant of his or her costs of appeal together with reasonable attorney's fees to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.~~

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If an appeal is taken by the Commonwealth, the appellate court shall award the defendant reasonable attorney's fees upon a request pursuant to Massachusetts Rule of Appellate Procedure 25 unless special circumstances would render such an award unjust. If an application taken by the Commonwealth under Rule 15(a)(2) is denied, a single justice of the Supreme Judicial Court shall award the defendant reasonable attorney's fees and costs upon the defendant's written application filed within 14 days of the denial of leave to appeal, unless special circumstances would render such an award unjust.

(e) Stay of the proceedings

If the trial court issues an order which is subject to the interlocutory procedures herein, the trial of the case shall be stayed and the defendant shall not be placed in jeopardy until interlocutory review has been waived or the period specified in Rule 15(b)(1) for instituting interlocutory procedures has expired. If an appeal is taken or an application for leave to appeal is granted, the trial shall be stayed pending the entry of a rescript from or an order of the appellate court. If an appeal or application therefor is taken by the Commonwealth, the defendant may be released on personal recognizance during the pendency of the appeal.

DRAFT Reporter's Notes to Mass. R. Crim. P. 15

These changes to Rule 15(d) clarify how a defendant may request attorney's fees and costs when the Commonwealth takes an interlocutory appeal or applies for leave to appeal from the Single Justice. These changes specify the court to which a defendant should submit the request and when the request must be filed. Massachusetts Rule of Appellate Procedure 25 provides for an award of fees when "permitted or required by contract, statute, regulation, rule, or other law." Mass. R. A. P. 25(a).

Attorney's fees and costs in interlocutory appeals

Rule 15(d) "seek[s] to equalize the resources of the defendant with those of the Commonwealth" when the Commonwealth obliges the defendant to undertake appellate litigation.

Commonwealth v. Gonsalves, 432 Mass. 613, 617 (2000). While defendants with counsel appointed or assigned by the Committee for Public Counsel Services already have access to appellate representation, defendants paying for their own counsel may not have funds for an interlocutory appeal.

Rule 15(d) "fixes this by requiring the Commonwealth to pay in that situation." *Commonwealth v. Vasquez*, 485 Mass. 405, 411 (2020). When a defendant who has retained counsel must take on the expense of responding to the Commonwealth's interlocutory appeal, "the award of attorney's fees . . . is mandatory." *Commonwealth v. Ennis*, 441 Mass. 718, 720 (2004). Regardless of the outcome in the appellate court, if the appeal is taken by the Commonwealth, the defendant is entitled to an award of attorney's fees. *Commonwealth v. Augustine*, 470 Mass. 837, 842 (2015) ("The Commonwealth is required to pay a defendant's appellate fees under Rule 15(d) regardless of whether it ultimately prevails or loses on appeal.").

How, where, and when to file

The procedure for a defendant to seek costs and attorney's fees for responding to an appeal by the Commonwealth is set forth in Mass. R. A. P. 25. Critically, the request for attorney's fees and costs must be made in the defendant's appellate brief. See, Reporter's Notes to Mass. R. A. P. 25 (2026); *Commonwealth v. Santos*, 99 Mass. App. Ct. 360, 365 (2021) ("caution[ing] all counsel who might be seeking fees pursuant to Rule 15(d) . . . to include that request in their primary brief"). This is to advise the appellate panel of the fee request so that it will retain the information necessary to adjudicate the fee request. (Previously, this requirement that the request be included in the appellate brief had been applied only in civil cases. *Commonwealth v. Ennis*, 441 Mass. 718, 719 (2004).)

When the Commonwealth takes an interlocutory appeal, the appellate court shall award the defendant reasonable attorney's fees and costs upon a request pursuant to Rule 25 unless special circumstances would render such an award unjust. (This language for the award of fees comes from G. L. c. 151B, § 9, third par.) This exception is "narrow." *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68 (1980). Such special circumstances would include "'outrageous' or 'inexcusable' conduct" on the part of the defendant or "'bad faith or obdurate conduct.'" *De Jesus Nazario v. Rodriguez*, 554 F.3d 196, 200 (1st Cir. 2009), quoting *Williams v. Hanover Hous.*

Auth., 113 F.3d 1294, 1301 (1st Cir 1997); *Stefan v. Laurenitis*, 889 F.2d 363, 371 (1st Cir. 1989). Mass. R. A. P. 25(c)(2) specifies that a request for costs on appeal including reasonable attorney's fees must be made by written motion supported by an affidavit.

When the Commonwealth applies to the single justice for leave to appeal an order determining a motion to suppress evidence prior to trial and that application is denied, the defendant may apply to the single justice for reasonable attorney's fees and costs. This written request must be filed within 14 days of the denial of leave to appeal. Fees and costs shall be awarded unless special circumstances would render such an award unjust. When the Commonwealth seeks further appellate review following review by the Massachusetts Appeals Court and its application is denied, the defendant may follow a similar procedure to apply to the single justice for fees expended to oppose the application. *Commonwealth v. Santos*, 99 Mass. App. Ct. 360, 365-366 (2021).

Prior to this rule change, the filing period for a request for fees and costs was not in the rule. The Supreme Judicial Court had ordered that such requests be made within thirty days of the denial of the leave to appeal or of the Commonwealth's voluntary dismissal of a grant of leave to appeal. *Commonwealth v. Ennis*, 441 Mass. 718, 721 n. 4 & 5. Because inconsistent deadlines and procedures for appellate fee requests had caused confusion among appellate attorneys, all requests for appellate attorney's fees now conform to the same procedures, including the fourteen day timeframe for filing requests.

[Current text of Mass. R. Crim. P. 25]

Rule 25. Motion for Required Finding of Not Guilty

(a) Entry by Court. The judge on motion of a defendant or on his own motion shall enter a finding of not guilty of the offense charged in an indictment or complaint or any part thereof after the evidence on either side is closed if the evidence is insufficient as a matter of law to sustain a conviction on the charge. If a defendant's motion for a required finding of not guilty is made at the close of the Commonwealth's evidence, it shall be ruled upon at that time. If the motion is denied or allowed only in part by the judge, the defendant may offer evidence in his defense without having reserved that right.

(b) Jury Trials.

(1) Reservation of Decision on Motion. If a motion for a required finding of not guilty is made at the close of all the evidence, the judge may reserve decision on the motion, submit the case to the jury, and decide the motion before the jury returns a verdict, after the jury returns a verdict of guilty, or after the jury is discharged without having returned a verdict.

(2) Motion After Discharge of Jury. If the motion is denied and the case is submitted to the jury, the motion may be renewed within five days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned, the judge may on motion set aside the verdict and order a new trial, or order the entry of a finding of not guilty, or order the entry of a finding of guilty of any offense included in the offense charged in the indictment or complaint.

(c) Appeal.

(1) Right of Appeal Where Motion for Relief Under Subdivision (b) Is Allowed After a Jury Verdict of Guilty. The Commonwealth shall have the right to appeal to the appropriate appellate court a decision of a judge granting relief under the provisions of subdivisions (b)(1) and (2) of this rule on a motion for required finding of not guilty after the jury has returned a verdict of guilty or on an order for the entry of a finding of guilt of any offense included in the offense charged in the indictment or complaint.

(2) Costs Upon Appeal. If an appeal or application therefor is taken by the Commonwealth, the appellate court, upon the written motion of the defendant supported by affidavit, may determine and approve the payment to the defendant of his costs of appeal together with reasonable attorney's fees, if any, to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.

Rule 25. Motion for Required Finding of Not Guilty

(a) **Entry by Court.** The judge on motion of a defendant or on ~~his~~ the judge's own motion shall enter a finding of not guilty of the offense charged in an indictment or complaint or any part thereof after the evidence on either side is closed if the evidence is insufficient as a matter of law to sustain a conviction on the charge. If a defendant's motion for a required finding of not guilty is made at the close of the Commonwealth's evidence, it shall be ruled upon at that time. If the motion is denied or allowed only in part by the judge, the defendant may offer evidence in ~~his~~ defense without having reserved that right.

(b) Jury Trials

(1) **Reservation of Decision on Motion.** If a motion for a required finding of not guilty is made at the close of all the evidence, the judge may reserve decision on the motion, submit the case to the jury, and decide the motion before the jury returns a verdict, after the jury returns a verdict of guilty, or after the jury is discharged without having returned a verdict.

(2) **Motion After Discharge of Jury.** If the motion is denied and the case is submitted to the jury, the motion may be renewed prior to sentencing or retrial ~~within five days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned, the judge may on motion set aside the verdict and order a new trial, or order the entry of a finding of not guilty, or order the entry of a finding of guilty of any offense included in the offense charged in the indictment or complaint.~~

(c) Appeal

(1) **Right of Appeal** ~~where motion for relief under subdivision (b) is allowed after a jury verdict of guilty.~~ The Commonwealth shall have the right to appeal to the appropriate appellate court a decision of a judge granting ~~relief under the provisions of subdivisions (b)(1) and (2) of this rule on~~ a motion for required finding of not guilty after the jury has returned a verdict of guilty ~~or on an order for the entry of a finding of guilt of any offense included in the offense charged in the indictment or complaint.~~

(2) **Costs Upon Appeal.** If an appeal ~~or application thereto~~ is taken by the Commonwealth, the appellate court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25, ~~upon the written motion of the defendant supported by affidavit, may determine and approve the payment to the defendant of his costs of appeal together with reasonable attorney's fees, if any, to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.~~

[Proposed new text of Mass. R. Crim. P. 25 - clean version]

Rule 25. Motion for Required Finding of Not Guilty

(a) Entry by Court. The judge on motion of a defendant or on the judge's own motion shall enter a finding of not guilty of the offense charged in an indictment or complaint or any part thereof after the evidence on either side is closed if the evidence is insufficient as a matter of law to sustain a conviction on the charge. If a defendant's motion for a required finding of not guilty is made at the close of the Commonwealth's evidence, it shall be ruled upon at that time. If the motion is denied or allowed only in part by the judge, the defendant may offer evidence in defense without having reserved that right.

(b) Jury Trials

(1) Reservation of Decision on Motion. If a motion for a required finding of not guilty is made at the close of all the evidence, the judge may reserve decision on the motion, submit the case to the jury, and decide the motion before the jury returns a verdict, after the jury returns a verdict of guilty, or after the jury is discharged without having returned a verdict.

(2) Motion After Discharge of Jury. If the motion is denied and the case is submitted to the jury, the motion may be renewed prior to sentencing or retrial.

(c) Appeal

(1) Right of Appeal. The Commonwealth shall have the right to appeal to the appropriate appellate court a decision of a judge granting a motion for required finding of not guilty after the jury has returned a verdict of guilty.

(2) Costs Upon Appeal. If an appeal is taken by the Commonwealth, the appellate court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25.

DRAFT Reporter's Notes to Mass. R. Crim. P. 25

Rule 25 sets forth the procedure for motions for a required finding of not guilty. These changes consolidate two forms of relief available under Rule 25 into Rule 30(b) because of the substantial overlap between the relief previously provided by the two rules. These changes do not alter the judge's authority under either rule but more clearly delineate the bases under which relief is available.

The changes also clarify the period in which a motion for a required finding of not guilty may be renewed, which caselaw had established was any time prior to sentencing despite the rule's former language limiting it to five days after the jury's discharge.

Rule 25(a)

This rule requires the judge, in either a jury trial or a trial before the judge, to enter a finding of not guilty on the charged offense or any part thereof at the close of either side's evidence when the evidence is insufficient as a matter of law. The ruling may be made upon the defendant's motion or on the judge's own motion. These changes eliminate references to gender.

When the motion is made after the Commonwealth's case-in-chief, it must be ruled upon at that time. Rule 25(a). "This is so that the defendant's decision whether to present a case -- and what sort of case to present -- is informed by the ruling on the required finding motion."

Commonwealth v. Lagotic, 102 Mass. App. Ct. 405, 407 n.4 (2023). See also *Commonwealth v. Yasin*, 483 Mass. 343, 350-351 (2019) (Trial judge committed prejudicial error by deferring ruling on motion for required finding made after Commonwealth's case-in-chief because this deprived defendant of right to require proof of every element of charged offense before deciding whether to offer proof.). The judge must determine whether the evidence, in its light most favorable to the Commonwealth, is sufficient to satisfy a rational trier of fact on each element of the offense charged that it would permit a finding of guilt beyond a reasonable doubt.

Commonwealth v. Brown, 449 Mass. 747, 761 (2007); *Commonwealth v. Dustin*, 476 Mass. 1003, 1003 n.3 (2016) (motion for required finding made before defendant offers evidence "fixes" defendant's rights by limiting sufficiency of the evidence evaluation to evidence offered only by the Commonwealth).

If the motion is denied or allowed only in part, the defendant may offer evidence without having reserved that right. The motion may be renewed after the defense case, after the verdict, Rule 25(b)(2), and even after sentencing under Rule 30(b)(1).

Rule 25(b)

This rule governs motions for a required finding of not guilty made or renewed in jury trials at the close of all the evidence.

Rule 25(b)(1)

When a motion for a required finding of not guilty is made at the close of all the evidence in a jury trial, the judge may reserve decision and submit the case to the jury. Deferral is permitted at this point because the defense no longer needs to know the ruling to decide whether to present a case. See *Lagotic*, 102 Mass. at 407 n.4. The discretion to reserve decision on the motion and submit the case to the jury allows the judge to see whether a jury will convict before deciding the motion. The motion may be ruled upon before the jury returns a verdict, after the jury returns a verdict of guilty, or after the jury is discharged without having returned a verdict. Rule 25(b)(1).

Rule 25(b)(2)

After the discharge of the jury, the motion for a required finding of not guilty may be renewed. The changes clarify the period in which the motion may be renewed. A motion for a required finding of not guilty made and denied after the close of all the evidence may be renewed under Rule 25 at any time prior to sentencing or retrial. This change in the period eliminates confusion

in the prior version of the rule that stemmed from two different time periods for bringing the motion depending on the relief sought.

The prior rule had a five-day period from discharge of the jury in which to renew a motion for a required finding of not guilty that was based on sufficiency of the evidence, but no time limit for motions to set aside the verdict and grant a new trial or to order entry of guilt of a lesser included offense. *Commonwealth v. Arias*, 488 Mass. 1004, 1006 (2021) (“Although motions filed under the first sentence of Rule 25(b)(2) must be filed within five days of the discharge of a jury, motions filed under the second sentence of the rule, like motions filed pursuant to Mass. R. Crim. P. 30, may be filed at any time.”). This change eliminates the disparity by allowing renewal of the motion under Rule 25 at any time prior to sentencing or retrial (if the jury was discharged without reaching a verdict).

Under the prior rule, the authority of the trial judge to order a new trial or to enter a finding of guilt on any lesser-included offense under G. L. c. 278, § 11, was placed in Rule 25(b)(2). See *Commonwealth v. Woodward*, 427 Mass. 659, 666 (1998). This authority has been removed entirely from Rule 25, but has not been abolished. Rather, it has been moved to Rule 30(b)(2) and (3). Rather than a confusing overlap between Rules 25 and 30, see *Commonwealth v. Rogers*, 494 Mass. 629, 646 (2024); *Commonwealth v. Gilbert*, 447 Mass. 161, 167 (2006), the division of authority between the two rules is now clearly delineated. Rule 25 governs claims of insufficiency of the evidence made prior to sentencing, and Rule 30 governs all claims for relief after conviction.

Rule 25(c)

The changes also simplify the language for the Commonwealth’s right of appeal after the grant of a motion for a required finding of not guilty after a jury has returned a verdict of guilt. No substantive change is thereby intended. No appeal is available from an order entering a judgment of acquittal where the jury has not first rendered a guilty verdict. *Commonwealth v. Yasin*, 483 Mass. 343, 354-355 (2019). See generally *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977).

Finally, the changes conform the procedure for awarding the defendant costs when the Commonwealth appeals to that set forth in Massachusetts Rule of Appellate Procedure 25. A similar change is made to the procedure for awarding the defendant costs when the Commonwealth takes an interlocutory appeal. Mass. R. Crim. P. 15(d).

[Current text of Mass. R. Crim. P. 30]

Rule 30. Post Conviction Relief

(a) **Unlawful Restraint.** Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts.

(b) **New Trial.** The trial judge upon motion in writing may grant a new trial at any time if it appears that justice may not have been done. Upon the motion the trial judge shall make such findings of fact as are necessary to resolve the defendant's allegations of error of law.

(c) **Post Conviction Procedure.**

(1) **Service and Notice.** The moving party shall serve the office of the prosecutor who represented the Commonwealth in the trial court with a copy of any motion filed under this rule.

(2) **Waiver.** All grounds for relief claimed by a defendant under subdivisions (a) and (b) of this rule shall be raised by the defendant in the original or amended motion. Any grounds not so raised are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.

(3) **Affidavits.** Moving parties shall file and serve and parties opposing a motion may file and serve affidavits where appropriate in support of their respective positions. The judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits.

(4) **Discovery.** Where affidavits filed by the moving party under subdivision (c)(3) establish a prima facie case for relief, the judge on motion of any party, after notice to the opposing party and an opportunity to be heard, may authorize such discovery as is deemed appropriate, subject to appropriate protective order.

(5) **Counsel.** The judge in the exercise of discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in the preparation and presentation of motions filed under subdivisions (a) and (b) of this rule. The court, after notice to the Commonwealth and an opportunity to be heard, may also exercise discretion to allow the defendant costs associated with the preparation and presentation of a motion under this rule.

(6) **Presence of Moving Party.** A judge may entertain and determine a motion under subdivisions (a) and (b) of this rule without requiring the presence of the moving party at the hearing.

(7) **Place and Time of Hearing.** All motions under subdivisions (a) and (b) of this rule may be heard by the trial judge wherever the judge is then sitting. The parties shall have at least 30 days notice of any hearing unless the judge determines that good cause exists to order the hearing held sooner.

(8) **Appeal.** An appeal from a final order under this rule may be taken to the Appeals Court, or to the Supreme Judicial Court in an appropriate case, by either party.

(A) If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon the appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal.

(B) If an appeal or application therefor is taken by the Commonwealth, upon written motion supported by affidavit, the Appeals Court or the Supreme Judicial Court may determine and approve payment to the defendant of the costs of appeal together with reasonable attorney's fees, if any, to be paid on the order of the trial court after entry of the rescript or the denial of the application. If the final order grants relief other than a discharge from custody, the trial court or the court in which the appeal is pending may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.

(9) **Appeal under G.L. c. 278, § 33E.** If an appeal or application for leave to appeal is taken by the Commonwealth under the provisions of Chapter 278, Section 33E, upon written notice supported by affidavit, the Supreme Judicial Court may determine and approve payment to the defendant of the costs of appeal together with reasonable attorney's fees to be paid on order of the trial court after entry of the rescript or the denial of the application.

[Proposed new text of Mass. R. Crim. P. 30 – redline version]

Rule 30. Post Conviction Relief

(a) **Unlawful Restraint.** Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the ~~trial~~ judge to release ~~that person~~~~him or her~~ or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of law~~the Constitution or laws of the United States or of the Commonwealth of Massachusetts~~.

~~_____ (b) **New Trial.** The trial judge upon motion in writing may grant a new trial at any time if it appears that justice may not have been done. Upon the motion the trial judge shall make such findings of fact as are necessary to resolve the defendant's allegations of error of law.~~

~~_____ (b) **Unjust Conviction.** After a conviction or a finding of sufficient facts, upon written motion, the judge~~

(1) shall order the entry of a finding of not guilty if the evidence was insufficient as a matter of law to sustain a conviction on the charge;

(2) may order the entry of a finding of guilt on any lesser included offense of an offense of which the defendant has been convicted in the interests of justice; or

(3) may order a new trial or allow the withdrawal of a guilty plea or admission to sufficient facts in the interests of justice.

The judge shall make such findings as are necessary to resolve the alleged errors.

(c) Post Conviction Procedure

(1) **Service and Notice.** The moving party shall serve the office of the prosecutor who represented the Commonwealth in the trial court with a copy of any motion filed under this rule.

(2) **Waiver.** All grounds for relief claimed by a defendant under Rule 30(a) and (b) subdivisions (a) and (b) of this rule shall be raised by the defendant in the original or amended motion. Any grounds not so raised are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.

(3) **Affidavits.** Moving parties shall file and serve and parties opposing a motion may file and serve affidavits where appropriate in support of their respective positions. The judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits.

(4) **Discovery.** ~~Where affidavits filed by the moving party under subdivision (c)(3) establish a prima facie case for relief, the judge on motion of any party, after notice to the opposing party and an opportunity to be heard, may authorize such discovery as is deemed appropriate, subject to appropriate protective order.~~

(A) **Written motion.** Any party may file a written motion for discovery relevant to a motion for postconviction relief. The moving party shall specify the discovery sought and shall demonstrate a reasonable basis to believe that the requested discovery will be relevant to a substantial ground for postconviction relief or is necessary to determine whether there is a substantial ground for postconviction relief. The motion shall describe all efforts made to obtain the requested information and demonstrate that the information cannot be obtained through due diligence without a court order. The judge, after notice to all parties and an opportunity to be heard, may order such discovery, from the prosecutor or any other entity or person, as the judge deems appropriate, subject to any appropriate protective order.

(B) **Timing.** A party may file a motion under Rule 30(c)(4)(A) before or after the filing of a motion for postconviction relief. If the motion is filed before the filing of

a motion for postconviction relief, the motion shall be supported by affidavits adequate to permit the judge to evaluate the moving party's need for the requested discovery.

(C) **Discovery from prior counsel.** Upon written motion demonstrating that prior criminal counsel for the defendant has failed, upon request, to provide information relevant to a conviction, the judge may order prior counsel to provide documents or information to the defense. With permission of the judge, the defendant may file such a motion ex parte.

(D) **Relationship with nonjudicially ordered discovery.** Any party may voluntarily disclose items and information to the other party without obtaining a court order. This rule does not alter the ethical duty of a prosecutor to disclose, without request, witness recantations and new, credible, and material evidence that establishes a reasonable likelihood that a convicted defendant did not commit an offense.

(5) **Counsel and Costs.** The judge in the exercise of discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in the preparation and presentation of motions filed under ~~subdivisions (a) and (b) of~~ this rule. The court, ~~after notice to the Commonwealth and an opportunity to be heard,~~ may also in the exercise of discretion ~~to~~ allow the defendant costs associated with the preparation and presentation of a motion under this rule.

(6) **Presence of Moving Party.** A judge may entertain and determine a motion under ~~subdivisions (a) and (b) of~~ this rule without requiring the presence of the ~~defendant~~moving party at the hearing.

(7) **Place and Time of Hearing.** All motions under ~~subdivisions (a) and (b) of~~ this rule ~~shall~~may be heard by the trial judge wherever the judge is then sitting, unless unavailability, disqualification, or other compelling cause requires otherwise. The parties shall have at least 30 days notice of any hearing unless the judge determines that good cause exists to order the hearing held sooner.

(8) **Appeal.**

(A) **Right to appeal.** An appeal from a final order under this rule may be taken to an appellate courtthe Appeals Court, or to the Supreme Judicial Court in an appropriate case, by either party by filing a notice of appeal in accordance with Massachusetts Rule of Appellate Procedure 4(b).

(AB) **Action pending appeal.** If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal. If the final order grants relief other than a discharge from custody, the trial court or the appellate court may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.

~~(BC) **Costs upon appeal.** If an appeal or application thereto is taken by the Commonwealth, the appellate court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25. upon written motion supported by affidavit, the Appeals Court or the Supreme Judicial Court may determine and approve payment to the defendant of the costs of appeal together with reasonable attorney's fees, if any, to be paid on the order of the trial court upon the entry of the rescript or the denial of the application. If the final order grants relief other than a discharge from custody, the trial court of the court in which the appeal is pending may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.~~

(9) Appeals subject to under G.L. c. 278, § 33E.

~~(A) **How taken.** Either party may apply for leave to appeal from a final order under this rule after the issuance of the rescript affirming a conviction on direct review subject to G.L. c. 278, § 33E, by (i) filing a notice of appeal in the Superior Court within thirty days of entry of the order in accordance with Massachusetts Rule of Appellate Procedure 4(b) and (ii) filing an application for leave to appeal with a single justice of the appellate court that issued the rescript within sixty days of entry of the order.~~

~~(B) **Action pending appeal.** If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal. If the final order grants relief other than a discharge from custody, the trial court or the appellate court may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.~~

~~(C) **Costs upon appeal.** If an appeal or application for leave to appeal is taken by the Commonwealth under the provisions of Chapter 278, Section 33E, upon written notice supported by affidavit, the appellateSupreme Judicial Court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25. If an application for leave to appeal filed by the Commonwealth is denied, a single justice of the appellate court may award the defendant reasonable attorney's fees and costs upon the defendant's written application filed within 14 days of the denial of leave to appealdetermine and approve payment to the defendant of the costs of appeal together with reasonable attorney's fees to be paid on order of the trial court after entry of the rescript or the denial of the application.~~

[Proposed new text of Mass. R. Crim. P. 30 - clean version]

Rule 30. Post Conviction Relief

(a) Unlawful Restraint. Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion

requesting the judge to release that person or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of law.

(b) Unjust Conviction. After a conviction or a finding of sufficient facts, upon written motion, the judge

(1) shall order the entry of a finding of not guilty if the evidence was insufficient as a matter of law to sustain a conviction on the charge;

(2) may order the entry of a finding of guilt on any lesser included offense of an offense of which the defendant has been convicted in the interests of justice; or

(3) may order a new trial or allow the withdrawal of a guilty plea or admission to sufficient facts in the interests of justice.

The judge shall make such findings as are necessary to resolve the alleged errors.

(c) Post Conviction Procedure

(1) **Service and Notice.** The moving party shall serve the office of the prosecutor who represented the Commonwealth in the trial court with a copy of any motion filed under this rule.

(2) **Waiver.** All grounds for relief claimed by a defendant under Rule 30(a) and (b) shall be raised by the defendant in the original or amended motion. Any grounds not so raised are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.

(3) **Affidavits.** Moving parties shall file and serve and parties opposing a motion may file and serve affidavits where appropriate in support of their respective positions. The judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits.

(4) Discovery.

(A) **Written motion.** Any party may file a written motion for discovery relevant to a motion for postconviction relief. The moving party shall specify the discovery sought and shall demonstrate a reasonable basis to believe that the requested discovery will be relevant to a substantial ground for postconviction relief or is necessary to determine whether there is a substantial ground for postconviction relief. The motion shall describe all efforts made to obtain the requested information and demonstrate that the information cannot be obtained through due diligence without a court order. The judge, after notice to all parties and an opportunity to be heard, may order such discovery, from the prosecutor or any other entity or person, as the judge deems appropriate, subject to any appropriate protective order.

(B) **Timing.** A party may file a motion under Rule 30(c)(4)(A) before or after the filing of a motion for postconviction relief. If the motion is filed before the filing of a motion for postconviction relief, the motion shall be supported by affidavits adequate to permit the judge to evaluate the moving party's need for the requested discovery.

(C) **Discovery from prior counsel.** Upon written motion demonstrating that prior criminal counsel for the defendant has failed, upon request, to provide information relevant to a conviction, the judge may order prior counsel to provide documents or information to the defense. With permission of the judge, the defendant may file such a motion ex parte.

(D) **Relationship with nonjudicially ordered discovery.** Any party may voluntarily disclose items and information to the other party without obtaining a court order. This rule does not alter the ethical duty of a prosecutor to disclose, without request, witness recantations and new, credible, and material evidence that establishes a reasonable likelihood that a convicted defendant did not commit an offense.

(5) **Counsel and Costs.** The judge in the exercise of discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in the preparation and presentation of motions filed under this rule. The court may in the exercise of discretion allow the defendant costs associated with the preparation and presentation of a motion under this rule.

(6) **Presence of Moving Party.** A judge may entertain and determine a motion under this rule without requiring the presence of the defendant at the hearing.

(7) **Place and Time of Hearing.** All motions under this rule shall be heard by the trial judge wherever the judge is then sitting, unless unavailability, disqualification, or other compelling cause requires otherwise. The parties shall have at least 30 days notice of any hearing unless the judge determines that good cause exists to order the hearing held sooner.

(8) **Appeal.**

(A) **Right to appeal.** An appeal from a final order under this rule may be taken to an appellate court by either party by filing a notice of appeal in accordance with Massachusetts Rule of Appellate Procedure 4(b).

(B) **Action pending appeal.** If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal. If the final order grants relief other than a discharge from custody, the trial court or the appellate court may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.

(C) **Costs upon appeal.** If an appeal is taken by the Commonwealth, the appellate court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25.

(9) **Appeals subject to G.L. c. 278, § 33E.**

(A) **How taken.** Either party may apply for leave to appeal from a final order under this rule after the issuance of the rescript affirming a conviction on direct review subject to G.L. c. 278, § 33E, by (i) filing a notice of appeal in the Superior Court within thirty days of entry of the order in accordance with Massachusetts Rule of Appellate Procedure 4(b) and (ii) filing an application for leave to appeal with a single justice of the appellate court that issued the rescript within sixty days of entry of the order.

(B) **Action pending appeal.** If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal. If the final order grants relief other than a discharge from custody, the trial court or the appellate court may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.

(C) **Costs upon appeal.** If an appeal is taken by the Commonwealth, the appellate-court may award the defendant reasonable attorney's fees and costs upon a request pursuant to Massachusetts Rule of Appellate Procedure 25. If an application for leave to appeal filed by the Commonwealth is denied, a single justice of the appellate court may award the defendant reasonable attorney's fees and costs upon the defendant's written application filed within 14 days of the denial of leave to appeal.

DRAFT Reporter's Notes to Mass. R. Crim. P. 30

Rule 30 is the principal mechanism for collateral attack on a criminal conviction or sentence under the Massachusetts Rules of Criminal Procedure. These are the first changes to the rule since 2001. They accompany changes to Rule 25 governing motions for a required finding of not guilty.

The changes to Rule 30(a) are technical. The changes to Rule 30(b) combine forms of relief after conviction that had previously been explicitly available in Rule 25(b)(2) and separately delineate the three forms of relief that may be available after a conviction. The changes provide that these forms of relief are also available after a guilty plea or admission to sufficient facts. Additionally, the changes set forth procedures for postconviction discovery, specify the availability of costs, clarify that the trial judge shall ordinarily hear a motion for postconviction relief, and establish procedures for appeal. These changes are intended to make the investigation, presentation, and consideration of claims for postconviction relief more efficient and to incorporate significant case law.

Rule 30(a)

This rule provides for relief from unlawful restraint due to a criminal conviction and allows for correction of an illegal sentence then being served. The changes to the rule remove references to the trial judge because motions for relief from unlawful restraint may be brought following a guilty plea. *Commonwealth v. Dykens*, 473 Mass. 635, 638-639 (2016) (“guilty plea is ‘an admission of the facts charged and is itself a conviction’ and is properly challenged under Rule 30(a)”), citing *Commonwealth v. Negron*, 462 Mass. 102, 105 (2012) (quotation and citation omitted). The changes also simplify the language describing the basis upon which such a motion may be brought under either Federal or Massachusetts law and remove references to gender. A motion to correct an unlawful sentence then being served may be brought when a defendant faces restraint of liberty from the sentence due to ongoing incarceration or probation. *Commonwealth v. Williams*, 96 Mass. App. Ct. 610, 613 (2019) (rule “facially inapplicable where the sentence and probationary period have already run”). The rule is also a proper mechanism to challenge an allegedly unlawful suspended sentence. *Commonwealth v. Azar*, 444 Mass. 72, 76-77 (2005) (rule proper vehicle to correct allegedly unlawful suspended sentence because of continued jeopardy should sentence be executed if defendant’s probation were to be violated). The Supreme Judicial Court has held that the rule may be used to challenge other ongoing restraints to liberty. *Commonwealth v. Parrillo*, 468 Mass. 318, 320 (2014) (rule proper vehicle to challenge community parole supervision for life as sentence condition); *Commonwealth v. Wimer*, 480 Mass. 1, 3-4 (2018) (rule proper method to challenge requirement defendant register as a convicted sex offender). Rule 30(a) is also the proper means to challenge a sentence that though lawful when imposed, has become unlawful due to subsequent case law. *Commonwealth v. Costa*, 472 Mass. 139, 143 (2015) (“judge has the power under Rule 30(a) to correct the unconstitutional sentence [of life without the possibility of parole] originally imposed”).

Rule 30(b)

The rule sets forth forms of relief from unjust convictions. The heading “Unjust Conviction” encompasses both convictions that are not supported by evidence sufficient as a matter of law to sustain them and those in which justice may not have been done. As under the rule prior to these changes, a written motion is required. Also as under the rule prior to these changes, there is no “outer limit of time within which a defendant must file such a motion.” *Commonwealth v. Gilbert*, 447 Mass. 161, 166 (2006).

The change in the rule clarifies that it is the appropriate mechanism for challenging the validity of an admission to sufficient facts as well as for challenging the validity of a conviction. G. L. c. 278, § 18 (setting forth provisions for continuance without a finding). A motion to vacate a guilty plea under Rule 30(b) has long been the appropriate mechanism for challenging the validity of a guilty plea. *Commonwealth v. Colon*, 439 Mass. 519, 524 (2003), citing *Commonwealth v. Huot*, 380 Mass. 403, 406 (1980). Although an admission to sufficient facts is not a conviction it is, “in many respects, the functional equivalent of a guilty plea.” *Commonwealth v. Villalobos*, 437 Mass. 797, 800-801 (2002) (internal quotations omitted). “We provide the same procedural protections to defendants who admit to sufficient facts and those who plead guilty because if a defendant who admitted to sufficient facts were to violate his or her probation and have it revoked, a conviction would enter without a new plea hearing.”

Commonwealth v. Fayad F., 495 Mass. 266, 272 (2025) (continuance without a finding entered after admission to sufficient facts in Juvenile Court adequate to establish proof of a “first offense” for Juvenile Court jurisdiction over subsequent minor misdemeanor charges), quoting *Souza v. Registrar of Motor Vehicles*, 462 Mass. 227, 235 n.6 (2012). The same logic applies equally to postconviction claims.

Rule 30(b)(1)

The addition of Rule 30(b)(1) incorporates the constitutional principle that a conviction that is not supported by evidence sufficient to establish each element of the offense charged beyond a reasonable doubt violates due process. *Commonwealth v. Latimore*, 378 Mass. 671, 677-678 (1979), citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When a conviction is reversed because of the insufficiency of the evidence, double jeopardy principles ordinarily preclude retrial and the appropriate relief is entry of a judgment of acquittal. *Commonwealth v. Amado*, 387 Mass. 179, 190 (2020), quoting *Burks v. United States*, 437 U.S. 1, 11 (1978) (“The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”) The same principle applies to convictions overturned on appeal because of the insufficiency of the evidence. *Marshall v. Commonwealth*, 463 Mass. 529, 538 (2012) (state “generally cannot retry a defendant when an appellate court overturns a conviction because of insufficient evidence”) (internal quotations omitted).

Rule 30(b)(2)

The addition of Rule 30(b)(2) incorporates the form of relief of reducing the degree of conviction to a lesser-included offense when the conviction was not consonant with justice. This relief has long been available to the trial judge but was previously placed in Rule 25(b)(2). *Commonwealth v. Gilbert*, 447 Mass. 161, 167 (2006) (upholding postconviction judge’s reduction of first degree murder conviction to second degree murder under Rule 25(b)(2) despite defendant’s having sought new trial under Rule 30(b)). See also *Commonwealth v. Pring-Wilson*, 448 Mass. 718, 731, 732 n.14 (2007) (treating trial judge’s grant of a new trial under Rule 25(b)(2) as a motion for new trial under Rule 30(b) despite defendant and judge both having cited Rule 25(b)(2) because “the substance of the motion was more in the nature of one filed under Mass. R. Crim. P. 30(b),” as it challenged the fairness of the trial rather than the sufficiency or weight of the evidence); *Commonwealth v. Brescia*, 471 Mass. 381, 388 n.7 (2015) (“The authority of a judge deciding a motion under Mass. R. Crim. P. 30(b) . . . is substantially similar to the authority on a motion under Mass. R. Crim. P. 25(b)(2).”); *Commonwealth v. Preston*, 393 Mass. 318, 322 (1984) (Rejecting Commonwealth’s argument that trial judge erroneously considered a motion for new trial immediately after jury verdict because “the defendant’s motion for a new trial, though denominated as a Rule 30(b) motion, could have been made at the same time under Rule 25(b)(2). Nothing of consequence turns on this difference.”). “Whether a verdict is consonant with justice is a matter distinct from whether there was sufficient evidence to support the verdict.” *Commonwealth v. Pfeiffer*, 492 Mass. 440, 448 (2023) (distinguishing sufficiency of the evidence analysis by appellate court in which evidence must be viewed in light most favorable to Commonwealth from trial judge’s authority to give

greater weight to defendant's version of events). The trial judge has heard all the evidence and may now consider its "over-all weight." *Commonwealth v. Gomez*, 495 Mass. 688, 703 (2025).

In making this assessment, the trial judge "should be guided by the same considerations that have guided [the Supreme Judicial Court] in the exercise of its powers and duties under [G.L. c. 278,] § 33E to reduce a verdict." *Commonwealth v. Gomez*, 495 Mass. 688, 703 (2025), quoting *Commonwealth v. Gaulden*, 383 Mass. 543, 555 (1981). For a discussion of these considerations, see *Gomez*, id. at 703-709; *Commonwealth v. Pfeiffer*, 492 Mass. 440, 456-457 (2023); and *Commonwealth v. Chhim*, 447 Mass. 370, 381-382 (2006). The trial judge's authority under the rule to reduce a jury's verdict is limited to reducing the verdict to a lesser included offense. This authority has typically been exercised when a judge, after presiding over the trial, concludes that "although a verdict of [the greater offense] was warranted by the evidence, a verdict of [the lesser offense] comported more closely with the weight of the evidence." *Gaulden*, 383 Mass. at 557. A reduction in the verdict may also be granted based on an error or errors in the trial (for example, an error in the jury instructions on the greater offense), see *Gilbert*, 447 Mass. at 176, at least so long as the "lesser included offense [was] unaffected by the error warranting the reduction." *Commonwealth v. Sanchez*, 485 Mass. 491, 505 (2020). The authority to reduce a verdict may be "used to ameliorate injustice caused by the Commonwealth, defense counsel, the jury, the judge's own error, or . . . the interaction of several causes." *Commonwealth v. Woodward*, 427 Mass. 659, 667 (1998).

Rule 30(b)(3)

The trial judge has broad discretion to set aside a conviction and order a new trial in the interests of justice. Since 1966, the standard for ordering a new trial has been a determination by the judge that "justice may not have been done." St.1966, c. 301. No change in this standard is intended by the use of the language "in the interests of justice." See E.B. Cypher, Criminal Practice and Procedure § 42.15 (4th ed. 2014) (proper exercise of discretion under Rule 30(b) "necessarily includes the flexibility to consider the case as a whole, to assess the weight of the evidence, and to bring the interest of justice to bear"). The change in the language from "if it appears that justice may not have been done" to "in the interests of justice" simply parallels that of Rule 30(b)(2) to make clear that the same standard applies in considering a motion for relief under either rule. The decisions under Rule 25(b)(2) concerning a trial judge's grant of a new trial should apply equally under this rule. See *Commonwealth v. Preston*, 393 Mass. 318, 322 (1984) (affirming grant of a new trial sought under Rule 30 because "defendant's motion for a new trial, though denominated as a rule 30(b) motion, could have been made at the same time under rule 25(b)(2)").

Practice under Rule 30(b) has coalesced around "a latticework of more specific standards designed to guide judges' determinations" of whether justice requires a new trial. *Commonwealth v. Brescia*, 471 Mass. 381, 388 (2015). Those specific standards focus on various types of errors that may occur during the investigation and prosecution of a criminal case, or on the posttrial discovery or development of new evidence casting doubt on the justice of the conviction. See *id.* at 389-390 & n.10 (collecting authorities). Even in cases where no single issue that fits neatly within established doctrinal frameworks requires reversal, a new trial should still be ordered if "a confluence of factors combined to create a substantial risk of a

miscarriage of justice.” *Commonwealth v. Rosario*, 477 Mass. 69, 78 (2017) (affirming allowance of new trial in arson case based on combination of new developments in science of fire investigations and medical diagnosis that, while not “newly discovered,” cast new doubt on voluntariness of defendant’s confession). Indeed, because “extraordinary fact patterns can frustrate even meticulous efforts to do justice,” a new trial may occasionally be warranted in the interests of justice even in the absence of *any* legal error or newly discovered evidence. *Brescia*, 471 Mass. at 391 (judge appropriately exercised discretion to order new trial where defendant suffered stroke between first and second day of his testimony, possibly affecting jury’s evaluation of his credibility). Ultimately, the three subdivisions of Rule 30(b) are predicated on the “fundamental principle” that “if it appears that justice may not have been done, the valuable finality of judicial proceedings must yield to our system’s reluctance to countenance significant individual injustices.” *Commonwealth v. Watt*, 493 Mass. 322, 336 (2024), quoting *Brescia*, 471 Mass. at 388.

The change clarifies that Rule 30 also provides authority to allow postconviction withdrawal of a guilty plea or an admission to sufficient facts. *Commonwealth v. Barros*, 494 Mass. 100, 111 (2024) (motion under Rule 30(b) proper device to attack validity of admissions to sufficient facts); *Commonwealth v. Scott*, 467 Mass. 336, 344 (2014) (motion under Rule 30(b) proper device to attack validity of a guilty plea); *Commonwealth v. Fernandes*, 390 Mass. 714, 715 (1984) (same). The specific doctrines applicable to motions to withdraw guilty pleas are naturally somewhat different than those applicable to motions to vacate a conviction after a trial. See, e.g., *Commonwealth v. Colon*, 439 Mass. 519, 529 (2003) (inadequate plea colloquy); *Commonwealth v. Hart*, 467 Mass. 322, 325-326 (2014) (insufficient factual basis); *Commonwealth v. Sylvain*, 466 Mass. 422, 427 (2013), *S.C.*, 473 Mass. 832 (2016) (ineffective assistance of counsel in advice about potential immigration consequences of a guilty plea). But the guiding principle under Rule 30(b) remains the same: a judge should allow a plea to be withdrawn if the judge is persuaded, for whatever reason, that justice so requires. See generally *Commonwealth v. Nikas*, 431 Mass. 453, 456 (2000) (postsentence motion to withdraw plea should only be granted “if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth”).

Rule 30(c). Post Conviction Procedure.

Postconviction discovery is subject to judicial discretion. *Commonwealth v. Stewart*, 383 Mass. 253, 261 (1981); *Commonwealth v. Holbrook*, 482 Mass. 596, 606 (2019) (noting “trial judge’s broad discretion in deciding postconviction discovery requests”). The rule provides specific procedures for seeking postconviction discovery.

Rule 30(c)(4)

The changes to the rule provide streamlined procedures for postconviction discovery. Although postconviction discovery is discretionary, several features of postconviction litigation made the absence of specific discovery procedures unnecessarily delay postconviction proceedings. First, postconviction claims such as ineffective assistance of counsel or prosecutorial failure to disclose materials favorable to the defense necessarily require information outside the record, so review of the record alone will not provide adequate discovery. Second, counsel handling

postconviction proceedings often are not those who were involved in the underlying case, so recalling prior discovery or searching counsel's own files are not meaningful substitutes. Finally, postconviction actions may be brought long after the proceeding that led to the conviction at issue, thereby presenting issues of lost files or materials.

The changes in postconviction discovery procedure address several issues. First, these procedures set forth steps a party seeking discovery must take as a predicate to making the request. These steps must be detailed in counsel's motion. Rule 30(c)(4)(A). Second, the changes set forth a standard, established in case law, that the party seeking discovery must satisfy. *Id.* Third, the changes clarify that discovery may be appropriate either because it is relevant to a substantial ground for postconviction relief or because it is necessary to determine whether such grounds exist. *Id.* Fourth, consistent with this second basis for discovery, the changes specify that a defendant may seek discovery before filing a motion for postconviction relief. Rule 30(c)(4)(B). Discovery prior to filing the motion for postconviction relief can focus and substantiate the claims, thereby enabling more thorough and informed consideration by the motion judge. Fifth, the changes make clear that discovery may properly be ordered from third parties in addition to the prosecution. Rule 30(c)(4)(A). Sixth, the changes set forth a procedure for obtaining information from prior counsel. Rule 30(c)(4)(C). Finally, the changes spell out that the discovery procedures do not prevent voluntary disclosures without a court order, and that they are independent of prosecutors' ethical obligations to affirmatively disclose evidence that establishes a reasonable likelihood that the convicted defendant did not commit an offense. Rules 30(c)(4)(D) & (E). Similarly, these changes do not affect the statutory provisions governing a motion for forensic or scientific analysis under G. L. c. 278A.

The rule makes no change to the procedures for service and notice to the prosecutor, waiver, the use of affidavits, or the authority of the judge to rule on the motion based on facts alleged in the affidavits. Rules 30(c)(1), (2) & (3).

Rule 30(c)(4)(A)

The rule permits a party to move for discovery and sets forth a standard the moving party must satisfy. Postconviction discovery may be sought by either party. *Berry v. Commonwealth*, 497 Mass. 261, 267 (2026) (postconviction discovery by Commonwealth before resentencing may be proper where fundamental fairness and accurate fact-finding concerning a psychiatric examination of defendant require a corresponding evaluation to avoid a "one-sided expert narrative"). Postconviction discovery is not limited to documentary material but may encompass other forms of evidence. *Berry*, *id.* at 264 (permitting court-ordered psychiatric evaluation as part of postconviction discovery).

Discovery may be ordered when the moving party demonstrates *either* a "reasonable basis to believe that the requested discovery will be relevant to a substantial ground for postconviction relief" *or* that it "is necessary to determine whether there is a substantial ground for postconviction relief." Rule 30(c)(4)(A). Necessarily, the party seeking discovery must "specify the discovery sought." *Id.* & *Commonwealth v. Robinson*, 493 Mass. 775, 795 (2024) (denial of postconviction discovery motion for prosecution's file proper where defendant "made no attempt to explain what evidence he was seeking").

The “reasonable basis to believe” that discovery will be “relevant to a substantial ground for postconviction relief” is intended to avoid confusion from prior language that required the defendant to establish a “prima facie case for relief” to demonstrate the appropriateness of discovery. *Commonwealth v. Daniels*, 445 Mass. 392, 406 (2005) (explaining that prima facie case in this context meant sufficient evidence for the matter to go to a jury rather than sufficient evidence to establish a presumption of entitlement to relief). Postconviction discovery “would serve no purpose” if access to it required that a defendant present evidence justifying a presumption of entitlement to a new trial. *Id.* The defendant need only “make a sufficient showing that the discovery is reasonably likely to uncover evidence that might warrant granting a new trial.” *Id.*, 445 Mass. at 407. The “reasonable basis to believe” standard is modest. *Commonwealth v. Scott*, 98 Mass. App. Ct. 843, 852 (2020) (“Where a party wants access to a juror questionnaire and can demonstrate that such access could potentially assist in litigating a viable postconviction issue, a judge should grant some form of access Potential assistance is a relatively low bar.”).

Commonwealth v. Holbrook, 482 Mass. 596 (2019), is instructive. The defendant, convicted of first degree murder, had offered a third-party culprit defense in which he alleged that the third-party culprit was the victim’s former housemate, Meagher. Meagher testified at trial he had lived with the victim for two years in a non-romantic relationship, had left on good terms, and had not communicated with the victim since moving out. The defendant moved for a new trial and postconviction discovery based on one witness’s report to law enforcement of seeing Meagher at the victim’s home two days before the victim’s body was found, and on another witness’s statement to law enforcement that the victim had complained Meagher had been constantly trying to extort money from him by email. The defendant received limited postconviction discovery providing access to the hard drive of the victim’s computer, which revealed ten months’ of outgoing email messages from the victim to Meagher or referencing Meagher. These messages contradicted Meagher’s testimony that the relationship had been non-romantic and that he had left the house on good terms. *Id.*, 482 Mass. at 600.

Armed with this new information, the defendant sought authorization for additional postconviction discovery from third party email providers of email communications between the victim and Meagher, between the victim and others that mentioned Meagher, or between Meagher and others that mentioned the victim in the two years before the killing. *Id.*, 482 Mass. at 605. The Court found the denial of this discovery was an abuse of discretion because limited discovery of communications between the victim and Meagher ended a year before the killing, so nothing could be inferred about subsequent communications, and because the statement that Meagher had been emailing the victim trying to extort him was a “sufficient showing that the discovery is reasonably likely to uncover evidence that might warrant granting a new trial.” *Id.*, 482 Mass. at 605, quoting *Commonwealth v. Daniels*, 445 Mass. at 407. The Commonwealth’s failure to disclose the email communications found on the victim’s hard drive, and its representation before trial that the device had nothing of evidentiary value, deprived the defendant of exculpatory material. *Id.*, 482 Mass. at 610-611.

“Postconviction discovery serves a focused and important purpose: to enable a defendant to ‘gather evidence to support an apparently meritorious claim where the evidence that can be

adduced to support the claim is unknown to the court.”” *Commonwealth v. Goparian*, 496 Mass. 348, 364 (2025), quoting *Commonwealth v. Ware*, 471 Mass. 85, 94 (2015). The party seeking discovery must make a preliminary showing that the information sought exists. Even when some postconviction discovery has been authorized, failing to authorize further discovery may be an abuse of discretion when postconviction investigation shows there may be additional information that might warrant grant of a new trial. *Commonwealth v. Holbrook*, 482 Mass. 596, 605-606 (2019); *Commonwealth v. Goparian*, 496 Mass. 348, 364-365 (2025) (abuse of discretion to deny postconviction discovery of proffer session by Federal inmate who implicated third-party culprit when postconviction investigation revealed prosecution team member participated in session so information should have been disclosed, as it was exculpatory). Compare *Commonwealth v. Escobar*, 479 Mass. 1010, 1010-1011 (2018) (Postconviction discovery properly ordered of work records and case lists concerning drug lab chemist whose testing productivity was comparable to that of co-worker chemist who engaged in egregious misconduct by falsifying test results) with *Commonwealth v. Duguay*, 492 Mass. 520, 540-541 (2023) (No abuse of discretion in denial of postconviction discovery seeking records concerning alleged third-party culprit based only on third party’s ill will toward victim).

Rule 30(c)(4)(B)

The rule provides that a motion for postconviction discovery may be filed before or after a motion for postconviction relief. Rule 30(c)(4)(B). This addresses the problem of postconviction counsel having to make a prima facie case for relief in order to demonstrate the appropriateness of discovery when counsel believe it is the materials sought that will establish a prima facie case. See also Rule 30(c)(4)(A) (discovery appropriate when “necessary to determine whether there is a substantial ground for postconviction relief”). Although a motion for postconviction discovery filed after a motion for postconviction relief need not include affidavits if the evidence already provided establishes the need for the postconviction discovery, a motion for postconviction discovery filed before a motion for postconviction relief must be accompanied by affidavits adequate to establish the party’s need for the discovery.

Rule 30(c)(4)(C)

Postconviction counsel require prior counsel’s information concerning the representation in order to assess certain bases for postconviction relief. Because this discovery is essential for postconviction counsel to determine what grounds for relief may be available, the rule specifies a procedure to obtain the information if prior counsel will not provide it. Rule 30(c)(4)(C). This provision is consistent with both ethical rules and national practice standards for prior counsel. Mass. R. Prof. C. 1.15A(b) (“A lawyer must make the client’s file available to a client or former client within a reasonable time following the client’s or former client’s request.”); ABA Criminal Justice Standards for the Defense Function 4-1.3 (4th ed. 2017) (“Some duties of defense counsel run throughout the period of representation, and even beyond.”) & 4-3.11(a) (“When a representation ends, if the client requests the client’s file, defense counsel should provide it to the client or, with the client’s consent, to successor counsel or other authorized representative.”). The Massachusetts Rules of Professional Conduct define the “client’s file” broadly. Mass. R. Prof. C. 1.15A(a)(1) – (6), as amended, 493 Mass. 1303 (2024) & Comment par. 2. The obligations to provide the client’s file are not excused because a lawyer forwarded papers to the

client during the representation. *Id.*, Comment par. 9. Complete provision of the client’s file is particularly significant to enable meaningful investigation by postconviction counsel. Prior counsel’s obligation to provide information to postconviction counsel extends beyond provision of the client’s file. National practice standards specify that postconviction counsel should “seek the cooperation of the client’s prior counsel in the evaluation and briefing of potential post-conviction [sic] issues. Prior counsel should provide such assistance as is possible.” ABA Criminal Justice Standards for the Defense Function 4-9.5(c). Because the defendant is entitled to this information from prior counsel, it is not necessary for the defendant to establish anything other than the refusal of prior counsel to provide the information upon request. The judge, however, retains the authority to deny or limit an order if necessary to prevent abuse or an unreasonable imposition upon prior counsel. Because postconviction counsel’s efforts to obtain this cooperation and information may potentially reveal privileged or confidential information, the rule provides that, with permission of the judge, the motion may be filed *ex parte*.

Rule 30(c)(4)(D)

Any party may voluntarily disclose items and information without either party obtaining a court order. This rule is not intended to discourage a culture of voluntary exchange of information, which significantly preserves judicial resources. Apart from this rule or any request, ethical duties of a prosecutor may require disclosure of items or information to the defendant. *Mass. R. Prof. C. 3.8*, as appearing in 473 *Mass. 1301* (2016). The rule incorporates the obligations set forth in *Mass. R. Prof. C. 3.8(d)*, as interpreted in *Commonwealth v. Gaines*, 494 *Mass. 525, 547* (2024) (reading 3.8(d) to “require the disclosure of any witness recantation known to the Commonwealth — regardless of its credibility or timeliness”). The rule also incorporates the obligations set forth in *Mass. R. Prof. C. 3.8(i)* to disclose new, credible, and material evidence that establishes a reasonable likelihood that a convicted defendant did not commit an offense. These disclosures must be made “regardless of whether [they] could previously have been discovered by the defense” and “should ordinarily be made promptly.” *Mass. R. Prof. C. 3.8*, Comment par. 7.

This rule does not affect postconviction discovery that may be available under other law. *G. L. c. 278A, § 7 & Commonwealth v. Watson*, 497 *Mass. 764, 780-781* (2026) (availability of postconviction discovery under *G. L. c. 278A* not governed by existence of evidence that could pose a challenge to defendant moving for a new trial).

Rule 30(c)(5)

The rule provides the judge discretion to assign or appoint counsel to prepare and present motions under Rule 30, and to allow costs associated with the preparation and presentation of a motion. Such requests for costs are entrusted to the discretion of the judge and not subject to the procedures under *G. L. c. 261, § 27C*, governing pretrial costs. See *Commonwealth v. Dubois*, 451 *Mass. 20, 33* (2008). The change to the rule eliminates the requirement of notice to the Commonwealth and an opportunity to be heard on a motion for costs. This avoids unnecessary delay in deciding a matter that does not require action by the Commonwealth.

Rule 30(c)(6)

The rule provides the judge discretion to hear and decide a motion without requiring the presence of the defendant. This change to the wording of the rule makes no substantive change, but merely recognizes that the Commonwealth may be a moving party under certain provisions of Rule 30, such as motions for postconviction discovery.

Rule 30(c)(7)

The rule requires that motions made under it be heard by the trial judge, unless unavailability, disqualification, or other compelling cause requires otherwise. “The judge who presided at a defendant’s trial normally should hear that defendant’s motion for a new trial.” *Commonwealth v. Sullivan*, 385 Mass. 497, 498, n.1 (1982). The rule’s change in phraseology from “may” to “shall” eliminates the ambiguity concerning the importance that the trial judge hear motions for new trial and sets forth specific reasons and a standard for the motion to be heard by another judge.

Rule 30(c)(8)

Appeals from final orders under Rule 30 in cases other than those involving convictions subject to G. L. c. 278, § 33E may be taken as a matter of right, in the manner set forth in Massachusetts Rule of Appellate Procedure 4(b). Rule 30(c)(8)(A). The rule reorganizes but makes no change to the provision governing actions pending appeal. Rule 30(c)(8)(B). The rule conforms the procedure for awarding the defendant costs when the Commonwealth appeals to that set forth in Massachusetts Rule of Appellate Procedure 25. Rule 30(c)(8)(C). A similar change is made to the procedure for awarding the defendant costs when the Commonwealth appeals from the grant of a motion for a required finding of not guilty after the jury verdict. Mass. R. Crim. P. 25(c)(2).

Rule 30(c)(9)

Appeals from final orders under Rule 30 in cases involving convictions subject to G. L. c. 278, § 33E sought after issuance of the rescript affirming a conviction on direct review require leave to appeal. Rule 30(c)(9)(A) & G. L. c. 278, § 33E. This is because under the statute such cases have already received plenary review by an appellate court before reaching the postconviction stage. *Commonwealth v. Smith*, 460 Mass. 318, 319-322 (2011).

The appeal is taken by filing a notice of appeal in the Superior Court within thirty days of the entry of the order from which appeal is sought and filing an application for leave to appeal with the single justice of the appellate court that issued the rescript within sixty days of the entry of the order. Rule 30(c)(9)(A). (Until issuance of the rescript, motions for new trial in cases involving convictions subject to G. L. c. 278, § 33E are brought to the appellate court. Denials of motions for new trial in such cases brought before the rescript are reviewed under the same standard as that applicable to direct appeals for capital cases. *Commonwealth v. Hill*, 432 Mass. 704, 710 n.14 (2000).)

Convictions subject to G. L. c. 278, § 33E (“capital cases”) include those for murder in the first degree and the third conviction of a habitual offender under G. L. c. 279, § 25(b). Although first degree murder convictions must receive direct appellate review by the Supreme Judicial Court, appellate review of third convictions under the habitual offender statute may also be had in the Appeals Court. *Commonwealth v. Billingslea*, 484 Mass. 606, 615-616 (2020) (interpreting G. L. c. 211A, § 10 to provide Appeals Court concurrent jurisdiction to review third convictions under habitual offender statute given “entire statutory scheme and the historical background of the relevant provisions”).

After issuance of the rescript affirming the conviction, an appeal by either party requires an application to the single justice of the court that issued the rescript for leave to appeal. The statute provides that the single justice must find that the appeal presents a “new and substantial question” which ought to be determined by the full court. G. L. c. 278, § 33E. This standard operates somewhat differently when leave to appeal is sought by the Commonwealth. *Commonwealth v. Smith*, 460 Mass. 318, 322 (2011) (In evaluating Commonwealth’s application for leave to appeal from allowance of a motion, the single justice’s “primary focus should be on the meritoriousness or ‘substantiality’ of the Commonwealth’s position on appeal and less on the newness of the underlying issue,” lest the Commonwealth have no opportunity to appeal the erroneous grant of a motion on an issue that was not new.).

The rule conforms the procedure for awarding the defendant costs when the Commonwealth appeals to that set forth in Massachusetts Rule of Appellate Procedure 25. If the Commonwealth’s application for leave to appeal is denied, the defendant has fourteen days in which to file a written application for attorney’s fees and costs with the single justice of the court that denied the application. Rule 30(c)(9)(C).