

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Barnstable, SS.

FAR - _____

APPEALS COURT - 21-P-1142

SIDDHARTH SIDDHARTH
Plaintiff-Appellee

v.

Rahul Chaturvedi
Defendant-Appellant

On Appeal from a Judgment of the Superior Court
Department of the Trial Court

APPELLEE, SIDDHARTH SIDDHARTH'S
APPLICATION FOR FURTHER APPELLATE REVIEW

November 23, 2022

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REQUEST FOR FURTHER APPELLATE REVIEW

Pursuant to Rule 27.1, Mass. R. App. P., the plaintiff/appellee, Siddharth Siddharth, respectfully requests that the Supreme Judicial Court grant further appellate review. Siddharth asserts that this Application presents an important procedural matter affecting the public interest that justice requires a final determination by the Supreme Judicial Court, for the reasons stated below.

STATEMENT OF PRIOR PROCEEDINGS

On April 6, 2017, the plaintiff, Siddharth Siddharth, filed a complaint in the Barnstable County Superior Court alleging that the defendant, Rahul Chaturvedi, had breached his obligations under the terms of a promissory note. Chaturvedi answered Siddharth's Complaint, admitted that he failed to make payments per the terms of the note, and also failed to assert any affirmative defenses.

On August 8, 2019, the Superior Court heard argument on Siddharth's Motion for Summary Judgment, and ruled that judgment may issue in Siddharth's favor on Chaturvedi's liability on the note, and, that the case will proceed to a bench trial on damages only.

On April 26, 2021, the Superior Court held a one day bench trial. On May 17, 2021, the Superior Court issued Findings of Fact and Rulings of Law on Jury Waived Trial on Damages, finding in favor of Siddharth, and ordering a total award in the amount of \$116,848.58. The Superior Court then issued an Order After Trial on May 24, 2021, and then entered Judgment on June 2, 2021.

On June 15, 2021, Chaturvedi filed a Motion for New Trial. While the Motion for New Trial was pending, Chaturvedi filed a Notice of Appeal on July 1, 2021. The Superior Court denied the Motion for New Trial on August 10, 2021.

On October 7, 2021, Siddharth filed a Motion to Dismiss Appeal relative to Chaturvedi's July 1, 2021 Notice of Appeal pursuant to Rules 9 and 10, Mass. R. App. P. On November 8, 2021, the Superior Court allowed Siddharth's Motion to Dismiss Appeal, raising sua sponte, that the July 1, 2021 Notice of Appeal was premature and was of no effect, in accordance with Rule 4(a), Mass. R. App. P. See Superior Court Order attached hereto at Ex. A.

On November 9, 2021, Chaturvedi filed a Notice of Appeal, appealing the Superior Court's decision allowing Siddharth's Motion to Dismiss Appeal.

On December 20, 2021, the appeal was entered in the Appeals Court (*Siddharth v. Chaturvedi*, 21-P-1142). On November 8, 2022, the Appeals Court Clerk's Office issued an order that stated:

ORDER: At oral argument scheduled for November 10, 2022, the parties should be prepared to discuss the potential applicability of *Roch v. Mollica*, 481 Mass. 164, 165 n.2 (2019), and *Tocci Building Corp. v. Iriv Partners*, 101 Mass. App. Ct. 133, 136 n.5 (2022). (Milkey, Henry, Shin, J.J.). Notice

(emphasis in original). The Appeals Court heard argument on November 10, 2022, and on November 21, 2022, issued a Memorandum and Order Pursuant to Rule 23.0 (the "Appeals Court Decision"). See 21-P-1142 Memorandum and Order attached hereto at Exhibit B.

The Appeals Court reversed the Superior Court's order striking Chaturvedi's July 1, 2021 Notice of Appeal, because it was "constrained by Roch and Tocci Building Corp. to reinstate the appeal," reasoning that Chaturvedi's appeal must be reinstated because the Superior Court took no action on his July 1, 2021 notice of appeal. See Ex B at 3.

STATEMENT OF FACTS RELEVANT TO APPEAL

The facts as stated in the Appeals Court Decision, Ex. B, are correctly stated, and, the facts relevant to this Application for Further Appellate Review are contained in the post-trial procedural history provided in the Statement of Prior Proceedings, above.

STATEMENT OF THE POINT TO WHICH SIDDHARTH SEEKS FURTHER APPELLATE REVIEW

Siddharth seeks review of how Rule 4(a), Mass. R. App. P., see copy of Rule 4 attached hereto as Exhibit C, is to be applied in conjunction with Roch v. Mollica, 481 Mass. 164, 165 n.2 (2019) ("Roch"), and Tocci Building Corp. v. Iriv Partners, 101 Mass. App. Ct. 133, 136 n.5 (2022) ("Tocci"). Rule 4(a)'s plain language provides a clear and concise procedure, that is generally applicable in all civil cases, for appealing parties to follow, while the more recent Roch and Tocci cases excuse Rule 4 violations in some undefined circumstances, and shift the burden to prevailing parties to file a motion if a party files an ineffective notice of appeal in the trial court, per Rule 4(a)(3), Mass. R. App. P. Roch and Tocci

transform Rule 4 compliance from a generally applicable rule, to one where the trial court (and possibly the single justice) determines compliance after-the-fact, on a case by case basis.

WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

Further appellate review is appropriate because this Court should clarify the uncertainties surrounding Rule 4(a), Mass. R. App. P., namely, what is a prevailing party to do if an ineffective notice of appeal is docketed in the trial court, what specific topics should the parties brief if the non-appelling party moves to strike the ineffective notice, and, in what court should such a motion be filed and under what standards should a decision be reviewed.¹

¹ A procedure already exists for a party who fails to timely file a notice of appeal. After the thirty-day deadline, a judge can allow a motion for leave to file a late notice of appeal only upon a showing of "excusable neglect." Rule 4(c), Mass. R. App. P. If the record does not support a showing of excusable neglect, "there is no room within which judicial discretion can operate." Pierce v. Hansen Eng'g & Machinery Co., 95 Mass. App. Ct. 713, 715 (2019), citing Shaev v. Alvord, 66 Mass. App. Ct. 910, 911 (2006).

Rule 4(a)(1), Mass R. App. P., states, in relevant part that:

In a civil case, unless otherwise provided by statute, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within 30 days of the date of the entry of the judgment, decree, appealable order, or adjudication appealed from. . . .

Rule 4(a)(3) then states:

A notice of appeal filed before the disposition of any timely motion listed in Rule 4(a)(2) shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion.

Thus Rules 4(a)(1) and 4(a)(3) provide a relatively simple framework as to when an appealing party must file a notice of appeal (within 30 days of an appealable order), and the effect of a notice of appeal filed prior to the disposition of any timely motion² (it “shall have no effect”).

On January 4, 2019, this Court issued Roch v. Mollica, 481 Mass. 164 (2019), that included footnote 2, which states as follows:

Judgment on the defendants' motion to dismiss was entered on August 8, 2017. On August 15, 2017, the plaintiff served on the defendants a motion for reconsideration of

² Rule 4(a)(2), Mass R. App. P., provides the list of motions that apply to Rule 4(a)(3)'s “shall have no effect” provision.

defendants' motion to dismiss. On August 28, 2017, the plaintiff filed the motion for reconsideration of the motion to dismiss and a notice of appeal. The motion for reconsideration was decided in September 2017. Because the plaintiff did not file a new notice of appeal after the motion for reconsideration had been decided, she failed to comply with Mass. R. A. P. 4 (a), as amended, 464 Mass. 1601 (2013). We nevertheless decide the appeal. On the compressed time frame here, the concerns underlying rule 4 (a) are not implicated: no action on the appeal had yet been taken before the motion for reconsideration was decided. See *Anthony v. Anthony*, 21 Mass. App. Ct. 299, 301 (1985) ("There [is] little point in having an appeal work its way up the ladder from a judgment which might be altered"). The appeal has been briefed and argued, and we transferred it here to address the important issue that it presents.

Roch, 481 Mass. at 165 n.2. This Court indicated that it may decide an appeal if a defective notice of appeal is filed, and no new notice is filed within 30 days of an appealable order, if no action had been taken on the appeal prior to resolution of the last remaining motion. The Court also commented that Roch presented important issues for this Court to address and that there also existed a "compressed timeframe." Id.

Then, on June 7, 2022, the Appeals Court issued Tocci Building Corp. v. Iriv Partners, 101 Mass. App.

Ct. 133 (2022), were in footnote 5 the Appeals Court stated:

Judgment entered on November 20, 2020. On November 30, 2020, IRIV and BHID respectively served a "Motion for Reconsideration under Superior Court Rule 9D and Mass. R. Civ. P. 59(e) [, 365 Mass. 827 (1974)]" and a "Motion for Reconsideration or to Amend Judgment under Superior Court Rule 9D and Mass. R. Civ. P. 59(e)." Each filed a notice of appeal on December 16, 2020, at the same time they filed their rule 59 (e) motions. Denials of the rule 59 (e) motions were entered on February 9, 2021. The defendants did not file new notices of appeal within thirty days. Rather, seventy-one days later, on April 21, 2021, each defendant filed a new notice of appeal and a joint motion with the single justice seeking an enlargement of time within which to file those notices of appeal. The single justice allowed the motion, writing, "Allowed. The notices of appeal filed on 4/21/21 are deemed timely-filed. See also Roch v. Mollica, 481 Mass. 164, 165 n.2 (2019)." The plaintiff has appealed from that order, arguing that the defendants did not show good cause to enlarge the time to file their notices of appeal.

Under the plain language of Mass. R. A. P. 4 (a) (3), as appearing in 481 Mass. 1606 (2019), the original notices of appeal were of no effect. Rule 4 (a) (3) provides, "A notice of appeal filed before the disposition of any timely motion listed in Rule 4(a)(2) shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion." Among the motions listed in rule 4 (a) (2) are any motion "to alter or amend a judgment under Rule 59 or for relief from judgment under Rule 60(b), however titled, but only if either motion is served within [ten] days after entry of judgment."

Nonetheless, in Roch, 481 Mass. at 165 n.2, the Supreme Judicial Court held that notices

of appeal like the original ones filed here will bring the merits of an appeal before the appellate court where, as here, "no action on the appeal had yet been taken before the motion for reconsideration was decided." The court explained that in such circumstances, "the concerns underlying rule 4 (a) are not implicated." *Id.* Consequently, in the circumstances present here, no enlargement of time was necessary. We dismiss the appeal from the single justice order as moot, and turn to the merits of the underlying appeal.

Tocci Building Corp., 101 Mass. App. Ct. at 135 n.5.

Thus, following Roch, the Appeals Court held that it also will hear cases despite an appealing party filing and failing to cure a defective notice of appeal. The Tocci court even went so far as to moot the Single Justice's order allowing the Tocci defendants' late notices of appeal to be deemed timely filed, calling into question whether the single justice can consider such a motion in the future in other cases.

Roch and Tocci create uncertainty to prevailing parties, as Siddharth is here, especially when Rule 4(a)(3), Mass. R. App. P., itself provides an explicit remedy if an appealing party files an ineffective notice of appeal: "[a] new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion." The rule, by its plain language,

protects appealing parties by instructing them to file a subsequent notice of appeal after the last relevant motion is decided.

Siddharth's case presents the exact difficulty that court rules are intended to clarify. Now that the Appeals Court reinstated Chaturvedi's July 1, 2022 Notice of Appeal, it is not entirely clear what the notice of appeal pertains to. Chaturvedi filed it after trial and after he served a Motion for New Trial, but before the Superior Court decided the motion.³ He never filed a new notice pursuant to Rule 4(a)(3), nor did he seek leave to file a late notice upon a showing of "excusable neglect" per Rule 4(c), Mass. R. App. P. If the letter of Rule 4(a) governed, Siddharth would have a final and unappealable judgment, which is apparently not the case now as the result of Roch and Tocci considerations.

The Appeals Court, being constrained by Roch and Tocci, imposed a situation where it is now Siddharth's burden to file post-trial motions in the Superior Court on remand to achieve finality after prevailing

³ Chaturvedi also filed other numerous post-trial motions, some timely, some not, all denied, and he failed to file timely appeal notices of those decisions.

at trial, when Chaturvedi is the party who created his own post-trial procedural issues by violating Rule 4(a)(1), failing to cure in accordance with Rule 4(a)(3), and failing to seek leave to file a late notice per Rule 4(c). This prejudices Siddharth, and other prevailing litigants like him, because Roch and Tocci now render what should be final and unappealable judgments and/or decided motions, potentially appealable when the appealing party fails to follow the rules of appellate procedure.

Parties who file ineffective notices of appeal and fail to file subsequent curative notices still, by rule, have an avenue of relief. A trial court can allow a motion for leave to file a late notice of appeal upon a showing of "excusable neglect," Rule 4(c), Mass. R. App. P., however, if the record does not support a showing of excusable neglect, "there is no room within which judicial discretion can operate." Pierce v. Hansen Eng'g & Machinery Co., 95 Mass. App. Ct. 713, 715 (2019), citing Shaev v. Alvord, 66 Mass. App. Ct. 910, 911 (2006). If there now exists exceptions to Rule 4(a)'s filing requirements, it stands to reason that a similar standard should apply to a party who filed an ineffective notice of appeal

and failed to file another proper notice after the trial court decides a final motion.

Roch and Tocci appear to create different and undefined standards for trial courts and litigants to follow if Rule 4(a) issues arise. As Rule 4(a), and the Roch and Tocci cases currently stand, an appealing party may violate Rule 4(a)(1) and fail to cure under 4(a)(3), and a court may nevertheless consider the ineffective notice of appeal to be effective without at least requiring a "excusable neglect" showing, in accordance with Rule 4(c).

Siddharth respectfully suggests that this additional post-trial litigation can be avoided by all civil litigants in the Commonwealth if courts hold appealing parties to the plain language of Rule 4(a), instead of requiring prevailing parties to file motions on undefined issues such as whether action has been taken on appeal, whether the issues raised in a certain case are important, whether the case presents a constrained timeline, and whether concerns underlying Rule 4(a) are implicated. Therefore, this Application, if so allowed, presents the Court with an opportunity to clarify the Rule 4(a) considerations discussed in Roch v. Mollica, 481 Mass. 164, 165 n.2

(2019), that the Appeals Court has now applied in Tocci Building Corp. v. Irv Partners, 101 Mass. App. Ct. 133, 136 n.5 (2022), and in the instant case.

CONCLUSION

Based on the foregoing, Plaintiff/Appellee, Siddharth Siddharth, respectfully requests that the Supreme Judicial Court GRANT his application for further appellate review.

November 23, 2022

Respectfully submitted,

SIDDHARTH SIDDHARTH,
By his Counsel

/s/ Anthony Riley

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CERTIFICATE OF COMPLIANCE

I, Anthony J. Riley, Esq., hereby certify pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure that the foregoing Application for Further Appellate Review complies with the rules of court that pertain to the filing of briefs, Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

Rule 20 compliance was ascertained by using 12-point Courier New font, 1,857 non-excluded words in the brief statement as to why FAR should be allowed, and the 2010 Microsoft Office Home and Business program.

/s/ Anthony Riley

Anthony J. Riley

CERTIFICATE OF SERVICE

I, Anthony J. Riley, counsel for the Appellee, Siddharth Siddharth, hereby certify that I have this 23rd day of November 2022, served electronic copies of the foregoing Application for Further Appellate Review on the Appellant, Rahul Chaturvedi by email.

Rahul Chaturvedi
775 East Falmouth Hwy., #351
East Falmouth, MA 02536
(857) 574-9009
rahulchaturvedi.md@gmail.com

Signed under the pains and penalties of perjury this 23 day of November, 2022.

/s/ Anthony Riley

Anthony J. Riley

ADDENDUM

Exhibit

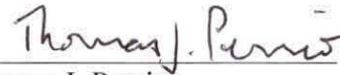
- A** - Superior Court's November 8, 2021 Order Allowing Sidharth's Motion to Dismiss Chaturvedi's July 1, 2021 Notice of Appeal
- B** - November 21, 2022 Appeals Court Memorandum and Order Pursuant to Rule 23.0, Siddharth v. Chaturvedi, 21-P-1142; and
- C** - Rule 4, Massachusetts Rules of Appellate Procedure.

Exhibit A

Siddharth v. Chaturvedi, 1772CV00144

Judgment in this case entered on June 2, 2021. A notice of appeal was docketed on July 1, 2021, after the docketing of a timely field motion for new trial. The motion for new trial tolls the time to appeal as such a motion suspends the finality of the underlying judgment as it calls into question the underlying judgment. On August 10, 2021 the motion for new trial was denied rendering final the judgment entered on June 2, 2021. On September 27, 2021 a motion to vacate judgment pursuant to Rule 60(b) was denied. The notice of appeal filed on July 1, 2021 was premature and of no effect. There being no other notice of appeal docketed, the motion to strike the appeal is **ALLOWED**.

So ordered,



Thomas J. Perrino
Justice of the Superior Court

DATED: November 8, 2021

Exhibit B

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 21-P-1142

SIDDHARTH SIDDHARTH

vs.

RAHUL CHATURVEDI.

Pending in the Superior

Court for the County of Barnstable

Ordered, that the following entry be made on the docket:

The order striking the
defendant's notice of
appeal is reversed, and the
case is remanded for
further proceedings
consistent with the
memorandum and order of the
Appeals Court.

By the Court,

Joseph F. Stanton, Clerk
Date November 21, 2022.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-1142

SIDDHARTH SIDDHARTH

vs.

RAHUL CHATURVEDI.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This is an appeal from an order of a Superior Court judge striking the defendant's notice of appeal as premature under Mass. R. A. P. 4 (a) (3), as appearing in 481 Mass. 1606 (2019). The plaintiff filed the underlying action in April 2017, seeking to enforce a promissory note executed by the defendant. After the defendant conceded liability and a trial was held on damages only, judgment for the plaintiff entered on June 2, 2021.

Within ten days of the judgment, the defendant served a motion for a new trial. On July 1, 2021, while the motion was still pending, the defendant filed a notice of appeal from the judgment. The trial judge denied the motion for a new trial on August 10, 2021, and the defendant did not thereafter file a new notice of appeal.

In October 2021, the plaintiff moved to dismiss the defendant's appeal "for failing to comply with [Mass. R. A. P.] 9(d) and 10(a)." On November 8, 2021, a second judge allowed the plaintiff's motion but on the ground (apparently raised sua sponte) that the defendant's motion for a new trial rendered his notice of appeal premature and of no effect. On November 9, 2021, the defendant filed a timely appeal from the second judge's order.

Rule 4 (a) (3) provides that "[a] notice of appeal filed before the disposition of any timely motion listed in Rule 4 (a) (2)" -- including a timely motion for a new trial -- "shall have no effect" and "[a] new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion." The defendant's July 1, 2021, notice of appeal was premature and of no effect under the plain language of this rule. In Roch v. Mollica, 481 Mass. 164, 165 n.2 (2019), however, the Supreme Judicial Court excused the appellant's noncompliance with the rule and reached the merits of her appeal, explaining that "the concerns underlying rule 4 (a) are not implicated" where "no action on the appeal had yet been taken before the motion for reconsideration was decided." A few years later, in Tocci Building Corp. v. Iriv Partners, LLC, 101 Mass. App. Ct. 133, 136 n.5 (2022), we interpreted Roch to have "held that

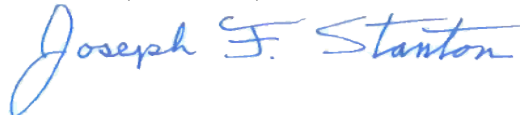
[premature] notices of appeal . . . will bring the merits of an appeal before the appellate court where . . . 'no action on the appeal had yet been taken before the motion for reconsideration was decided.'"

Here, when the trial judge denied the defendant's motion for a new trial, no action had been taken on the defendant's July 1, 2021, appeal. In these circumstances, while we are sympathetic to the plaintiff's wanting to see an end to this protracted litigation, we are constrained by Roch and Tocci Building Corp. to reinstate the appeal.¹ We do not preclude the plaintiff on remand from asserting other grounds for dismissing the appeal, including the grounds raised in his original motion.

The order striking the defendant's notice of appeal is reversed, and the case is remanded for further proceedings consistent with this decision.

So ordered.

By the Court (Milkey, Henry & Shin, JJ.²),



Clerk

Entered: November 21, 2022.

¹ We note that the second judge did not have the benefit of Tocci Building Corp., supra, when he issued his decision.

² The panelists are listed in order of seniority.

Exhibit C

RULES OF APPELLATE PROCEDURE

Appellate Procedure Rule 4: Appeal - when taken

EFFECTIVE DATE:

04/01/2022

UPDATES:

Amended May 15, 1979, effective July 1, 1979
Amended July 20, 1984, effective January 1, 1985
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(a) Appeals in civil cases

(1)

In a civil case, unless otherwise provided by statute, the notice of appeal required by [Rule 3](#) shall be filed with the clerk of the lower court within 30 days of the date of the entry of the judgment, decree, appealable order, or adjudication appealed from; but if the Commonwealth or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry, except in child welfare cases, in which the notice of appeal shall be filed within 30 days from the date of the entry of the judgment, decree, appealable order, or adjudication. If a notice of appeal is mistakenly filed in an appellate court, the clerk of such appellate court shall note the date on which it was received and transmit it to the clerk of the lower court from which the appeal was taken and it shall be deemed filed in such lower court on the

date so noted. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(2)

If a motion is made or served in a timely manner under the [Massachusetts Rules of Civil Procedure \(/law-library/massachusetts-rules-of-civil-procedure\)](#) and filed with the lower court by any party, the time to file an appeal runs for all parties from the entry of the order disposing of the last remaining motion:

(A) for judgment under [Rule 50\(b\)](#)

[\(/rules-of-civil-procedure/civil-procedure-rule-50-motion-for-a-directed-verdict-and-for-judgment#-b-motion-for-judgment-notwithstanding-the-verdict\);](#)

(B) under [Rule 52\(b\)](#) [\(/rules-of-civil-procedure/civil-procedure-rule-52-findings-by-the-court#-b-courts-other-than-district-court-amendment\)](#) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

(C) to alter or amend a judgment under [Rule 59](#) [\(/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments\)](#) or for relief from judgment under [Rule 60\(b\)](#)

[\(/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-\),](#) however titled, but only if either motion is served within 10 days after entry of judgment; or

(D) under [Rule 59](#) [\(/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments\)](#) for a new trial.

(3)

A notice of appeal filed before the disposition of any timely motion listed in Rule 4(a)(2) shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion.

(b) Appeals in criminal cases

(1)

In a criminal case, unless otherwise provided by statute or court rule, the notice of appeal required by [Rule 3](#) [\(/rules-of-appellate-procedure/appellate-procedure-rule-3-appeal-how-taken-0\)](#) shall be filed with the clerk of the lower court within 30 days after entry of the judgment, appealable order, or adjudication appealed from, or entry of a notice of appeal by the Commonwealth, or the imposition of sentence, whichever comes last.

(2)

If a motion for a new trial is filed under Massachusetts Rules of Criminal Procedure 25 (b) (2) or 30 within 30 days of the verdict, finding of guilt, judgment, adjudication, or imposition of sentence, the period to appeal shall not terminate until 30 days from entry of the order disposing of the motion. If a motion is filed for reconsideration within 30 days of entry of the order disposing of the motion, the period to appeal shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

(3)

If a motion is filed for reconsideration within 30 days of an appealable order, judgment, or adjudication, the period to appeal from the decision for which reconsideration was sought shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

(c) Extension of time for filing notice of appeal

Upon a showing of excusable neglect, the lower court may extend the time for filing the notice of appeal or notice of cross appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with service upon all other parties.

(d) Appeal by a self-represented party confined in an institution

If an institution has a system designed for legal mail, a self-represented party confined there must use that system to receive the benefit of this rule. If such party files a notice of appeal in either a civil or criminal case, the notice is timely if deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a signed certificate in compliance with [Rule 13\(a\)\(1\)\(B\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-13-filing-and-service-0#-a-filing](#)) setting out the date of deposit. If the notice of appeal is not received by the last day for filing, the certificate shall give rise to a presumption of timely filing provided it shows compliance with this rule. Failure to attach the certificate shall not of itself render the notice of appeal invalid or untimely, and the lower court may permit the later filing of a certificate. If such party files the first notice of appeal in a civil case under [Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)), the 14-day period provided in [Rule 4\(a\)\(1\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases](#)) for another party to file a notice of appeal runs from the date when the lower court enters the first notice.

Reporter's notes

(2022)

Rule 4(b) was amended in 2022, by adding subdivision (b)(3), to reflect the common-law rule that the timely filing of a motion for reconsideration in a criminal case tolls the time period for a party to file a notice of appeal from a ruling on a motion filed under Rule 25(b)(2) or 30, or from another appealable order, judgment, or adjudication that is the subject of the motion for reconsideration. See *Commonwealth v. Lewis*, [57 Mass. App. Ct. 931](#) (<http://masscases.com/cases/app/57/57massappct931.html>), 931-932 (2003) ("timely motion to reconsider, generally one that is filed within thirty days of the action the moving party wants reconsidered, extends the time for filing a notice of appeal to thirty days after the motion to reconsider has been acted upon"), citing [Commonwealth v. Powers](#) (<http://masscases.com/cases/app/21/21massappct570.html>), 21 Mass. App. Ct. 570, 573-574 (1986) and [Commonwealth v. Montanez](#) (<http://masscases.com/cases/sjc/410/410mass290.html>), 410 Mass. 290, 294 & n.4 (1991). See also [Commonwealth v. Jordan](#) (<http://masscases.com/cases/sjc/469/469mass134.html>), 469 Mass. 134, 147 n.24 (2014).

A timely-filed motion for reconsideration generally extends the time for filing a notice of appeal only for the appealable order, judgment, or adjudication for which reconsideration was sought. For example, if, five months after the verdict, the defendant moved for a new trial under Mass. R. Crim. P. 30, and the motion was denied, and then, within 30 days of that denial, moved for reconsideration, unsuccessfully, the defendant would have 30 days from the denial of the motion for reconsideration to appeal from the rulings on the Rule 30 motion and the motion for reconsideration, but not from the underlying verdict because more than 30 days had elapsed before the defendant filed the Rule 30 motion. On the other hand, if the defendant filed the Rule 30 motion within 30 days of the verdict, and filed a timely, but unsuccessful, motion for reconsideration, the defendant would have 30 days from entry of the order resolving the motion for reconsideration to appeal from: (1) the verdict; (2) the decision on the motion for a new trial; and (3) the ruling on the motion for reconsideration.

Consistent with the rule for civil cases, the addition of subdivision (b)(3) is not intended to provide a party with multiple opportunities to extend the time period to claim an appeal by filing repeated motions for reconsideration of the same appealable order, judgment, or adjudication. See Mass. R. A. P. 4(a)(2), Reporter's Notes (2013). The only circumstance when a motion for reconsideration extends the time for filing an appeal from an appealable order, judgment, or adjudication is when the motion is filed within 30 days of entry of the appealable order, judgment, or adjudication that was the subject of reconsideration. Any motion for reconsideration filed beyond that 30 day period has no tolling effect.

(2019)

[Rule 4](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0](#)) continues to set forth the time period when a notice of appeal must be filed. While [Rules 4\(a\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases](#)) and [4\(b\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases](#)) continue to govern, respectively, civil cases and criminal cases, the 2019 amendments divided these subdivisions to improve their clarity by distinguishing among their separate topics. [Rules 4\(a\)\(1\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases](#)) and [4\(b\)\(1\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases](#)) govern the time period to file a notice of appeal, and [Rules 4\(a\)\(2\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases](#)), [4\(a\)\(3\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases](#)), and [4\(b\)\(2\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases](#)) govern the tolling of the time period.

Rules [4\(a\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) and [4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases) continue to specify the types of lower court dispositions that may be appealed, but were amended to add language consistent with [Rule 3\(c\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-3-appeal-how-taken-0#-c-content-of-the-notice-of-appeal). [Rule 3\(c\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-3-appeal-how-taken-0#-c-content-of-the-notice-of-appeal), which governs the contents of a notice of appeal, specifies that the notice of appeal shall “designate the judgment, decree, adjudication, order, or part thereof appealed from,” while the prior [Rule 4\(a\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) referenced only “judgment.” Accordingly, [Rule 4\(a\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) (governing civil cases) was amended to include “judgment, decree, appealable order, or adjudication.” Similarly, [Rule 4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases) (governing criminal cases) was amended to provide that a notice of appeal may be filed from a “judgment, appealable order, or adjudication” in addition to the other categories stated in [Rule 4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases). Importantly, in both [Rules 4\(a\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) and [4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases), the word “appealable” was added before the word “order” to clarify the lower court dispositions from which an appeal may be taken. Not every “order” may be appealed. An “appealable order” includes those orders authorized by statute, rule, or case law as immediately appealable. These 2019 amendments ensure consistency and completeness and were not intended to alter the types of lower court dispositions that are appealable.

As set forth in [Rule 4\(a\)\(2\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases), certain motions toll the time period to claim an appeal. Prior to these amendments, the time period for filing a notice of appeal was tolled when a “timely motion under the [Massachusetts Rules of Civil Procedure](#) (/law-library/massachusetts-rules-of-civil-procedure) is filed in the lower court by any party.” However, the pertinent [Massachusetts Rules of Civil Procedure](#) (/law-library/massachusetts-rules-of-civil-procedure) use different terms, including “filed,” “served,” and “made,” to determine whether a post-judgment motion is timely. See [Mass. R. Civ. P. 50\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-50-motion-for-a-directed-verdict-and-for-judgment#-b-motion-for-judgment-notwithstanding-the-verdict) (“serve”), [52\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-52-findings-by-the-court#-b-courts-other-than-district-court-amendment) (“made”), [59\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-b-time-for-motion) (“served”), [59\(e\)](#) (/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-e-motion-to-alter-or-amend-a-judgment) (“served”), and [60\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-) (“made”). Therefore, in 2019, [Rule 4\(a\)\(2\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) was amended to include the phrase “made or served in a timely manner” to clarify that the time period to file a notice of appeal is tolled when a party timely complies with the requirements established for bringing a post-judgment motion under the applicable [Massachusetts Rules of Civil Procedure](#) (/law-library/massachusetts-rules-of-civil-procedure), including that the motion “is filed.”

The word “filed” is retained in [Rule 4\(a\)\(2\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) to clarify that, regardless of the language used in the applicable [Massachusetts Rules of Civil Procedure](#) (/law-library/massachusetts-rules-of-civil-procedure), the post-judgment motion must actually be filed with the lower court to toll the time period to file a notice of appeal. This phrasing is intended to address the situation where a party serves a post-judgment motion in compliance with a lower court standing order or rule, such as [Superior Court Rule 9A](#) (/superior-court-rules/superior-court-rule-9a-civil-motions), but then never files the motion with the lower court. In that situation, the time period to file a notice of appeal is not tolled because the motion was only served and not filed. Finally, the last clause of the prior sentence was relocated and revised slightly to clarify that the time for filing a notice of appeal for all parties begins on the date when the lower court enters the order disposing of the last remaining motion enumerated in the rule.

[Rule 4\(a\)\(2\)\(C\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) was amended to clarify that only a motion “for relief from judgment under Rule 60(b)” tolls the time period to file a notice of appeal. The 2013 amendments’ inclusion of “relief from judgment under Rule 60, however titled” was intended to encompass only [Mass. R. Civ. P. 60\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-) motions since [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) does not reference or provide for “relief from judgment.” Instead, a [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) motion allows the court to correct certain clerical mistakes arising from oversight or omission. A [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) motion is intended to correct the record to reflect the original adjudication and may not be used to alter the substantive rights of the parties. See [1973 Reporter’s Note to Mass. R. Civ. P. 60](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#reporter-s-notes). Moreover, the phrase “however titled,” added in 2013, was not intended to expand the scope of the rule to include [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) motions. See [2013 Reporter’s Note to Rule 4](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#reporter-s-notes). Unlike Fed. R. App. P. 4(a)(4)(A)(vi), which tolls the time

period to file a notice of appeal upon a timely motion “for relief under Rule 60[.],” which includes both a Fed. R. Civ. P. 60(a) and a 60(b) motion, the prior Massachusetts rule, as amended in 2013, more narrowly tolled the time period only where there was a timely motion for “relief from judgment under Rule 60, however titled.” However, the text of the rule after the 2013 amendment could inadvertently cause some litigants to believe, incorrectly, that a [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) motion would toll the time period to file a notice of appeal. Accordingly, in 2019, [Rule 4\(a\)\(2\)\(C\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) was amended to clarify that only a [Mass. R. Civ. P. 60\(b\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-) motion, and not a [Mass. R. Civ. P. 60\(a\)](#) (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-a-clerical-mistakes) motion, will toll the time period to file a notice of appeal.

[Rule 4\(a\)\(3\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) includes the requirement of prior [Rule 4\(a\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) that a notice of appeal filed before the disposition of any post-judgment motion listed in [Rule 4\(a\)\(2\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) has no effect, and that a new notice of appeal must be filed. The provision is revised to clarify that the requirement applies to motions that are “timely.” It further clarifies that entry in the lower court of the order disposing of the last remaining post-judgment motion begins the time period for filing a new notice of appeal.

The final revision to [Rule 4\(a\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) is the deletion of the reference to fees for filing a notice of appeal. The only existing fees required for the filing of a notice of appeal are in the Appellate Divisions of the District Court and Boston Municipal Court, which are not governed by these Rules. Deleting reference to such fees removes potential for confusion.

The phrase “whichever comes last” was added at the end of [Rule 4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases) to clarify that the time for filing a notice of appeal runs from the happening of the last occurrence enumerated in the rule.

[Rule 4\(b\)\(2\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases) was amended to clarify that a motion filed pursuant to [Mass. R. Crim. P. 25\(b\)\(2\)](#) (/rules-of-criminal-procedure/criminal-procedure-rule-25-motion-required-for-finding-of-not-guilty#-b-jury-trials) terminates the time for filing a notice of appeal for the moving party. Like a motion filed pursuant to [Mass. R. Crim. P. 30](#) (/rules-of-criminal-procedure/criminal-procedure-rule-30-postconviction-relief), a motion filed pursuant to [Mass. R. Crim. P. 25\(b\)\(2\)](#) (/rules-of-criminal-procedure/criminal-procedure-rule-25-motion-required-for-finding-of-not-guilty#-b-jury-trials) calls the judgment of conviction into question. If a motion filed pursuant to either rule is allowed, the conviction is vacated and an appeal by the moving party is unnecessary. If the motion is denied, the full time period fixed by [Rule 4\(b\)\(1\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases) commences to run from the date of entry of the order denying the motion.

[Rule 4\(c\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-c-extension-of-time-for-filing-notice-of-appeal) was amended to specifically state that service upon all other parties is required when a party seeks by motion an extension of time for filing a notice of appeal.

[Rule 4\(d\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution) is a new subdivision that incorporates the so-called “inmate mailbox rule” concerning the filing of a notice of appeal by self-represented parties confined in an institution. Rule 4(d) is intended to address the concerns highlighted by the Supreme Judicial Court in [Commonwealth v. Hartsgrrove, 407 Mass. 441](#) (<http://masscases.com/cases/sjc/407/407mass441.html>), 445 (1990), as to the limitations of a person confined in an institution to effectuate the “mailing” of a document on a certain day. The subdivision is modeled on Fed. R. App. P. 4(c), with slight changes.

In [Commonwealth v. Hartsgrrove, 407 Mass. 441](#) (<http://masscases.com/cases/sjc/407/407mass441.html>), 445 (1990), the Supreme Judicial Court relied on the United States Supreme Court’s interpretation of Fed. R. App. P. 4 in *Houston v. Lack*, 487 U.S. 266, 270-272 (1988), to hold that a self-represented party confined in an institution would be deemed to have filed a notice of appeal with the trial court, in accordance with [Mass. R. App. P. 4\(b\)](#) (/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-b-appeals-in-criminal-cases), upon the inmate having deposited the notice of appeal in the prison’s institutional mailbox. The Supreme Judicial Court observed that “[t]he Supreme Court’s reasoning bears quoting at length”:

“The situation of prisoners seeking to appeal without the aid of counsel is unique. Such prisoners cannot take the steps other litigants can take to monitor the processing of their notices of appeal and to ensure that the court clerk receives and stamps their notices of

appeal before the 30-day deadline. Unlike other litigants, pro se prisoners cannot personally travel to the courthouse to see that the notice is stamped “filed” or to establish the date on which the court received the notice. Other litigants may choose to entrust their appeals to the vagaries of the mail and the clerk’s process for stamping incoming papers, but only the pro se prisoner is forced to do so by his situation.... [T]he pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control or supervise and who may have every incentive to delay. No matter how far in advance the pro se prisoner delivers his notice to the prison authorities, he can never be sure that it will ultimately get stamped “filed” on time. And if there is a delay the prisoner suspects is attributable to the prison authorities, he is unlikely to have any means of proving it, for his confinement prevents him from monitoring the process sufficiently to distinguish delay on the part of prison authorities from slow mail service or the court clerk’s failure to stamp the notice on the date received. Unskilled in law, unaided by counsel, and unable to leave the prison, his control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access—the prison authorities—and the only information he will likely have is the date he delivered the notice to those prison authorities and the date ultimately stamped on his notice.”

Id. at 445–446, quoting *Houston v. Lack*, 487 U.S. at 270–272. The Supreme Judicial Court held that the filing of the notice of appeal should be deemed to have occurred upon the inmate’s relinquishment of control of the notice of appeal to the prison authorities, and not on the date the clerk received it. Id. at 444.

Because *Harts Grove* concerned a notice of appeal in a criminal matter, the court did not reach the question of its applicability to civil matters. Although the Supreme Judicial Court in *Harts Grove* did not construe the word “inmate,” some Federal circuit courts of appeal have construed the word “inmate” to refer to civilly committed persons as well as prisoners. See *Brown v. Taylor*, 829 F.3d 365 (5th Cir. 2016); *Parrish v. McCulloch*, 481 Fed. Appx. 254, 254 (7th Cir. 2012); *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004). The committee agreed with this approach and concluded civilly committed persons were within the intended scope of the rule announced in *Harts Grove*. Accordingly, the language of the 2019 amendment adding [Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)) both incorporates the Supreme Judicial Court’s decision in *Harts Grove* and extends its application to the filing of notices of appeal by all self-represented persons confined in an institution, including civilly committed persons. See [G.L. c. 123, §§ 1, 7, 35](#) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123>); [G.L. c. 123A, § 12](#) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123a/Section12>). This is consistent with Fed. R. App. P. 4(c). Whether the case involves a criminal or civil appeal, the concerns as to the limitations placed on persons confined in an institution regarding access to mail are the same, and thus [Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)) applies equally to both types of cases.

[Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)) provides that the notice of appeal is to be deemed filed on the date the document is deposited for mailing in the institution’s internal mailing system. The subdivision requires a party to show timely filing by including a certificate in compliance with [Rule 13\(a\)\(1\)\(B\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-13-filing-and-service-0#-a-filing](#)). This certificate creates a presumption of timely filing. However, not including this certificate will not itself render the notice of appeal invalid or untimely because [Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)) permits the lower court to allow later filing of the certificate. Unlike Fed. R. App. P. 4(c)(1)(A), this subdivision requires only that the party’s certificate set forth the date of deposit, and does not include the further requirement that the party also state that first-class postage has been prepaid because some Massachusetts institutions affix postage after the item leaves the inmate or civilly committed person’s hands.

[Rule 4\(d\)](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-d-appeal-by-a-self-represented-party-confined-in-an-institution](#)), consistent with Fed. R. App. P. 4(c)(2), establishes that in a civil case, the 14-day time period for another party to file a notice of appeal begins when the filing of the first notice of appeal is docketed in the lower court.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the [2019 Reporter’s Notes to Rule 1](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-1-scope-of-rules-definitions-0#reporter-s-notes-](#)).

With regard to the preparation of the 2019 Reporter’s Notes to this Rule, see the first paragraph of the [2019 Reporter’s Notes to Rule 1](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-1-scope-of-rules-definitions-0#reporter-s-notes-](#)). For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see [2019 Reporter’s Notes to Rule 1, sections I. and II](#) ([/rules-of-appellate-procedure/appellate-procedure-rule-1-scope-of-rules-definitions-0#reporter-s-notes-](#)).

(2013)

The 2013 amendment to [Appellate Rule 4\(a\)](/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) changed item (3) to provide that, if served within ten days after entry of judgment, a motion under [Mass. R. Civ. P. 59](/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments) to alter or amend a judgment or a motion under [Mass. R. Civ. P. 60](/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order) for relief from judgment will toll the time period to claim an appeal from the underlying judgment.

The language “however titled” in the amended version is intended to make clear that the substance and not the title of the motion should control. See [Pentucket Manor Chronic Hospital, Inc. v. Rate Setting Commission](http://masscases.com/cases/sjc/394/394mass233.html), 394 Mass. 233; 235-236 (1985). Thus a post-judgment motion under either [Mass. R. Civ. P. 59](/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments) or [60](/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order), whether titled as a motion to alter, amend, or vacate, for relief from judgment, or for reconsideration, if served within ten days, will toll the time period to file a notice of appeal.

The 2013 amendment to [Mass. R. A. P. 4\(a\)](/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) was intended to address the confusion that sometimes arose when a post-judgment motion, denominated a motion for “reconsideration,” was served within ten days after entry of judgment. Since the text of the [Massachusetts Rules of Civil Procedure](/law-library/massachusetts-rules-of-civil-procedure) does not refer to motions for reconsideration, a motion for reconsideration, if served within ten days of judgment, could have been treated as a motion under [Rule 59](/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments) (for new trial or to alter or amend judgment) or as a motion under [Rule 60\(b\)](/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-) (for relief from judgment). If treated as a [Rule 59](/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments) motion, the motion for reconsideration would have operated to toll the time period to claim an appeal. If treated as a [Rule 60\(b\)](/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-) motion, the motion for reconsideration would not have served to toll the time period to claim an appeal. [Mass. R. A. P. 4\(a\)](/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases), as it existed prior to the 2013 amendment. The 2013 amendment to [Mass. R. A. P. 4\(a\)](/rules-of-appellate-procedure/appellate-procedure-rule-4-appeal-when-taken-0#-a-appeals-in-civil-cases) eliminates this potential for confusion by tolling the time period to claim an appeal where a motion for reconsideration is served within ten days after entry of judgment.

This amendment is not intended to provide a litigant with multiple opportunities to extend the time period to claim an appeal. Assume that the defendant serves a motion for relief from judgment within ten days of entry of judgment, thereby staying the time period to claim an appeal from the judgment. Two months later, the judge enters an order denying the motion for relief. Entry of that order starts the clock running to file a notice of appeal. If the defendant moves for reconsideration of the order denying relief from judgment, the motion for reconsideration should have no effect on the time period to claim appeal from the original judgment.

A 2009 amendment to Rule 4(a)(4)(a) of the Federal Rules of Appellate Procedure similarly recognized that a motion for relief from judgment under Rule 60 tolls the time period to file a notice of appeal.

Downloads

[Massachusetts Rules of Appellate Procedure](https://www.mass.gov/doc/massachusetts-rules-of-appellate-procedure/download) (https://www.mass.gov/doc/massachusetts-rules-of-appellate-procedure/download) (PDF 1.04 MB)

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