

# COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT

## ORDER GOVERNING APPEALS

### FROM CONVICTIONS OF MURDER IN THE FIRST DEGREE

General Laws c. 278, § 33E, is intended to provide defendants with a comprehensive review of their convictions and to ensure that their appeals are finally adjudicated without undue delay. The dual goals of rendering justice and achieving finality are documented in the statute's legislative history.

After a direct appeal from a conviction of murder in the first degree has been entered in the Supreme Judicial Court, the statute requires motions for a new trial to be filed in the Supreme Judicial Court. The court has, in the past, typically stayed the direct appeal for an indefinite time while a defendant investigates, prepares, and files a new trial motion, and thereafter until the motion has been heard and decided, typically after referral by this court to the Superior Court. Consequently, direct appeals of convictions of murder in the first degree have sometimes remained on this court's docket for five, ten, fifteen, or more years.

So that direct appeals and any appeals from the rulings on the new trial motions may be heard and decided without undue delay, this ORDER sets forth the following protocol:

**(a) Special master or single justice.** The court shall appoint a special master to oversee the progress of first degree murder appeals and motions for a new trial and to implement and enforce the terms of this Order. Alternatively, the court may designate one of the Justices to perform that role. All references in this Order to "the special master" shall mean either the special master or any Justice who has been designated by the court for these purposes.

**(b) Time for filing motions for a new trial.** In any case in which the defendant contemplates filing a motion for a new trial in this court after the direct appeal has been entered and having the ruling on that motion considered in

conjunction with the direct appeal, the defendant must file the motion as soon as reasonably practicable, but no later than eighteen months after the entry of the direct appeal. Extensions may be granted by the special master, on a case-by-case basis, based on a substantial showing of need. Review of the denial of a motion for a new trial filed within eighteen months or within the period of any authorized extension will be considered with the direct appeal. Review of the denial of a motion for a new trial filed after eighteen months (or after the extended deadline) will not presumptively be considered with the direct appeal.

**(c) Status conferences.** An initial status conference with counsel for the defendant and counsel for the Commonwealth shall be held before the special master within six months of the date of entry of the direct appeal. Further status conferences presumptively shall be held at nine, twelve, and fifteen months after the direct appeal has been entered, or at such other intervals as determined by the special master. The special master, in consultation with the clerk, will set the specific dates for these conferences.

(1) Within four months after entry of the direct appeal, the defendant shall file a status report stating whether all transcripts necessary for review under G. L. c. 278, § 33E, have been received by the clerk for the full court.

(2) At the six-month status conference, the defendant's counsel will be required to report whether the defendant does or does not intend to file a motion for a new trial. If no motion will be filed, the briefing schedule for the direct appeal will begin to run and will follow the time periods set forth in Mass. R. A. P. 19 (c) (1).

(3) Unless the defendant will not be filing a motion for a new trial, at each status conference following the filing of the four-month status report, the defendant's counsel shall report on (i) the progress that has been made in investigating and pursuing the motion for a new trial; (ii) the next steps that are planned; and (iii) any difficulties that have been encountered or are anticipated that might affect the timely filing of the motion for a new trial. The report may be given orally, unless the special master requires it to be in writing.

(4) At the twelve-month status conference, if a motion for a new trial has not been filed, the defendant's counsel shall report whether a motion for a new trial will be filed. If counsel reports that a motion

will be filed, counsel will then have up to six additional months to file the motion. If no motion will be filed, the briefing schedule for the direct appeal will begin to run and will follow the time periods set forth in Mass. R. A. P. 19 (c) (1).

(5) If, at any point after the initial status conference, it becomes apparent to counsel that a motion for a new trial will not be filed, counsel shall so advise the clerk and counsel for the Commonwealth immediately, in which case the briefing schedule for the direct appeal will begin to run and will follow the time periods set forth in Mass. R. A. P. 19 (c) (1).

(6) The special master may adjust the schedule for these periodic status conferences, and the time for the ultimate filing of a motion for a new trial, on a case-by-case basis.

**(d) Action on motions.** When a motion for a new trial is filed during the pendency of a direct appeal, G. L. c. 278, § 33E, authorizes the Supreme Judicial Court either to rule on the motion or to remand it to the Superior Court for hearing and determination there. If a motion is timely filed in accordance with this Order and is remanded to the Superior Court, the Supreme Judicial Court, in the absence of extraordinary circumstances, will not require briefs to be filed for the direct appeal until the motion has been decided in the Superior Court.

**(e) Time for filing briefs.** As stated in paragraph (b) above, the denial of a motion for a new trial filed within eighteen months or within the period of any authorized extension will be considered with the direct appeal. When a motion for a new trial has been decided in the Superior Court, after the appeal from the ruling on the motion is entered in this court, the time for filing briefs addressing both the direct appeal and the ruling on the new trial motion (in a situation where the motion has been denied), or for filing briefs on the new trial ruling alone (in a situation where the motion has been allowed), will be set by the clerk as required by Mass. R. A. P. 19 (c) (2); presumptively, the briefing schedule will be ninety days for the appellant's brief, ninety days thereafter for the appellee's brief, and thirty days for any reply brief.

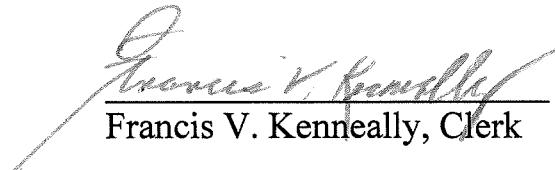
**(f) Changes of counsel.** If, during the pendency of an appeal, new counsel is appointed or has been retained to represent the defendant, counsel shall file a notice of appearance in this court immediately. The deadlines previously set forth in this Order and by the special master shall remain in effect despite the change in

counsel, but the special master may adjust the time for status conferences and for the filing of briefs and new trial motions for good cause:

**(g) Review after eighteen months.** This Order will be reviewed by the court eighteen months from the date of this Order.

This Order shall be effective on September 4, 2019, and applicable to appeals entered on or after that date.

By the Court,

  
Francis V. Kenneally, Clerk

Date: August 6, 2019