

Table of Contents

Volume 41

PART I. APPELLATE PROCEDURE GENERALLY

CHAPTER 1. INTRODUCTION TO APPEALS

I. APPELLATE COURTS, GENERALLY

- § 1:1 Overview of appellate courts and procedure
- § 1:2 Difference between trial courts and appellate courts, judges and justices

II. JURISDICTION AND ORGANIZATION

- § 1:4 Constitutional bases of appellate jurisdiction

III. JUSTICES AND COURT PERSONNEL

- § 1:10 Appointment of appellate court justices

IV. GOVERNING DOCTRINES

- § 1:19 Doctrine of separation of powers
- § 1:28 State preemption

V. COURT RULES AND STANDING ORDERS

- § 1:36 Adoption, interpretation, and effect of court rules and standing orders—Effect of court rules
- § 1:37 Adoption, interpretation, and effect of court rules and standing orders—Interpretation of rules of court

PART II. THE MASSACHUSETTS APPELLATE COURTS

CHAPTER 2. THE SUPREME JUDICIAL COURT

II. ROLE AS THE “COURT OF LAST RESORT”

- § 2:9 Application of constitutional provisions

V. ADMINISTRATION OF THE JUDICIAL BRANCH

§ 2:30 Administration of the judicial branch

§ 2:35 Supreme Judicial Court's § 4A transfer authority

VII. CERTIFIED QUESTIONS

A. QUESTIONS CERTIFIED TO THE SUPREME JUDICIAL COURT

§ 2:38 Certification of questions of law

§ 2:39 Certification of questions of law—Illustrations

CHAPTER 3. THE APPEALS COURT

I. APPEALS COURT, BACKGROUND AND ORGANIZATION

§ 3:2 Justices

II. ORGANIZATION, RESPONSIBILITIES AND OPERATION OF THE APPEALS COURT JUSTICES

§ 3:8 Process for a dissenting opinion and when the majority of the Court agrees with the dissent (the “Sciaba” protocol)

V. DECISIONS OF THE APPEALS COURT

§ 3:36 Citation of Lower Court decisions

VI. FURTHER APPELLATE REVIEW OF APPEALS COURT DECISIONS

§ 3:39 Discretionary review of Appeals Court decision by the Appeals Court

PART III. FINALITY AND APPEALABILITY

CHAPTER 4. APPEALABILITY

I. JURISDICTION

§ 4:1 Introduction

II. FINALITY AND RIPENESS

§ 4:14 Doctrine of ripeness in administrative agency decisions

III. STANDING

A. GENERALLY

TABLE OF CONTENTS

- § 4:15 Standing to appeal
- § 4:16 Lack of standing as jurisdictional issue on appeal

B. SPECIFIC SITUATIONS

- § 4:18 Parties of record in lower court

IV. ADDITION OR SUBSTITUTION OF PARTIES ON APPEAL

- § 4:23 Overview
- § 4:25 Substitution of parties
- § 4:26 Substitution on appeal due to transfer of party's interest

VI. MOOTNESS, RULES AND EXCEPTIONS

- § 4:34 Generally
- § 4:35 Mootness when the relief sought is no longer available
- § 4:37 Mootness of a preliminary injunction
- § 4:38 Appeal from probation violation rendered moot by defendant pleading guilty to new offenses
- § 4:44 Mootness and vacatur *[New]*

PART IV. EXCEPTIONS TO FINALITY

CHAPTER 5. PETITIONS FOR INTERLOCUTORY RELIEF

- § 5:1 Overview—Civil cases

CHAPTER 6. DOCTRINE OF PRESENT EXECUTION

- § 6:1 Overview
- § 6:1.50 Determination whether interlocutory order falls is immediately appealable *[New]*
- § 6:2 Scope of appeal under the doctrine of present execution is limited
- § 6:3 Present execution and appealability of disqualification order of attorney in criminal cases
- § 6:4 Examples of specific interlocutory orders that fall within the doctrine of present execution
- § 6:5 Examples of specific interlocutory orders that do not fall within the doctrine of present execution
- § 6:6 Procedure for claiming an appeal under the doctrine of present execution
- § 6:7 Filing of petition for interlocutory review not necessary
- § 6:8 Appellate court may dismiss appeal or may reach merits in some cases *[New]*

CHAPTER 7. REPORT OF QUESTIONS OF LAW

I. GOVERNING AUTHORITY AND PROCEDURES

§ 7:6 Limits on reporting—Exception for appeals involving allowance or denial of a preliminary injunction

IV. REPORT FORMAT AND PROCEDURES

B. CIVIL CASES

§ 7:21 Format and procedure—Requirements for interlocutory reports in civil cases

CHAPTER 8. SEPARATE AND FINAL JUDGMENT (MASS. R. CIV. P. 54(B)) IN CIVIL CASES

§ 8:1 Overview, separate and final judgment (Mass. R. Civ. P. 54(b))

§ 8:3 No just reason for delay

§ 8:7 Factors that can render a Rule 54(b) certification defective

§ 8:8 Review on appeal

PART V. POST-JUDGMENT MOTIONS AND COLLATERAL ATTACKS ON THE JUDGMENT

CHAPTER 9. CIVIL CASES: JUDGMENT, POSTJUDGMENT MOTIONS, AND TOLLING OF THE NOTICE OF APPEAL

I. JUDGMENTS IN CIVIL CASES

§ 9:1 Overview

§ 9:4 Entry of judgment (Mass. R. Civ. P. 58(a))—Separate Document Rule

§ 9:6 “Manufactured finality” is disfavored

§ 9:11 Appellate timeline

§ 9:13 Effect of a corrected or amended judgment on the time period to file a notice of appeal

II. DECLARATORY JUDGMENTS

§ 9:14 Overview (G.L. c. 231A)

§ 9:15 Declaratory judgment statute requires an “actual controversy”

TABLE OF CONTENTS

**III. POST-JUDGMENT MOTIONS AND THE
TOLLING OF TIME TO FILE A NOTICE OF
APPEAL**

§ 9:23 Motions that toll the time to file a notice of appeal, Mass. R. A.
P. 4(a)(2)

**IV. MOTIONS FOR DIRECTED VERDICT (RULE
50(a)) AND FOR JUDGMENT
NOTWITHSTANDING THE VERDICT (RULE
50(b))**

§ 9:24 Motions under Mass. R. Civ. P. Rule 50

**V. MOTIONS TO AMEND OR MAKE ADDITIONAL
FINDINGS OF FACT (RULE 52(a))**

§ 9:33 Motions to alter or amend a judgment under rule 59 or for
relief from judgment under Rule 60, however titled

**VI. MOTIONS FOR RELIEF FROM JUDGMENT OR
ORDER (RULE 60)**

B. RELIEF UNDER RULE 60(a)

§ 9:35 Clerical mistakes (Rule 60(a))

**VII. MOTIONS FOR A NEW TRIAL (MASS. R. CIV. P.
59)**

§ 9:57 Appellate review of order on motion for new trial

VIII. MOTIONS FOR RECONSIDERATION

§ 9:60 Tolling the time period to file a notice of appeal by motion for
reconsideration

**CHAPTER 10. APPEALS AND POST-
CONVICTION MOTIONS IN CRIMINAL
CASES**

I. INTRODUCTION

§ 10:14 Motions to reconsider can toll appeal

**II. THE DEFENDANT'S DIRECT APPEAL, G.L. C.
278, § 28 AND MASS. R. A. P. 4(B)**

§ 10:34 Conditional guilty pleas permissible under Mass. R. Crim. P.
12

III. INTERLOCUTORY ORDERS

§ 10:36 Interlocutory appeal from order disqualifying defendant's attorney

VII. REVIEW OF CAPITAL CASES

§ 10:110 The "Gatekeeper" provision (§ 33E)—Time deadline

PART VI. THE APPEAL: INITIATION, DOCKETING, BRIEFING AND ARGUMENT

CHAPTER 11. THE DECISION TO APPEAL

I. GENERAL CONSIDERATIONS

§ 11:4 Settlement

II. SPECIFIC CONSIDERATIONS AND DECISIONS

§ 11:5 Questions to consider in deciding whether to appeal

III. LEGAL CONSIDERATIONS

§ 11:7 Represented client may not also proceed as a self-represented litigant

§ 11:8 Right of appeal of prevailing parties limited [*Retitled*]

V. OTHER CONSIDERATIONS

§ 11:13 Cross appeals

CHAPTER 12. COMMENCING AN APPEAL

I. GENERALLY

§ 12:2 Taking the appeal—Entry of the judgment, decree, appealable order, or adjudication appealed from

II. THE NOTICE OF APPEAL

§ 12:4 The notice of appeal—Timing

§ 12:6 The notice of appeal—Timing in civil cases when "the Commonwealth or an officer or agency thereof is a party"

§ 12:7 The notice of appeal—Notice of cross appeal

§ 12:8 The notice of appeal—Timing, when a notice of appeal is "filed"

§ 12:9 The notice of appeal—Timing, filing by a self-represented party confined to an institution

§ 12:10 Content of the notice of appeal—Generally

§ 12:11 Content of the notice of appeal—Specification of the party or parties taking the appeal

TABLE OF CONTENTS

- § 12:13 Content of the notice of appeal—Specific designation of the judgment, decree, adjudication, order, or part thereof appealed from
- § 12:13.50 Content of the notice of appeal—Effect of Minor Defects in the Notice of Appeal *[New]*
- § 12:17 Service of the notice of appeal
- § 12:18 Tolling of time period to file a notice of appeal in civil and criminal cases (Mass. R. A. P. 4) *[Retitled]*
- § 12:21 Appellate court’s consideration of appeal on merits despite premature notice of appeal
- § 12:22 Appealing order on post-judgment motion, and “bringing up” the underlying judgment

IV. ASSEMBLY OF THE RECORD

- § 12:31 Lower court clerk’s assembly of the record—Rule 9. Assembly of the record; reproduction of exhibits; notice of assembly; and transmission of documents from the lower court
- § 12:32 Clerk’s failure to assemble the record
- § 12:33 The record appendix—Designation and identification of contents of record appendix
- § 12:36.50 Transmission of “nonreproducible physical evidence or material the possession, transmission, or dissemination of which may constitute a violation of criminal law or a court order” *[New]*
- § 12:38 The record appendix—Rule 18, contents, cost, filing, and service

V. DOCKETING OF THE APPEAL AND APPEARANCE OF COUNSEL

- § 12:55 Docketing of the appeal—Divestment of lower court’s jurisdiction

VI. DISMISSAL OF THE APPEAL

- § 12:58 Voluntary dismissal of appeal—Voluntary dismissal in the lower court

CHAPTER 13. MOTION PRACTICE IN THE APPELLATE COURTS

- § 13:5 Procedural requirements—Form and contents of motions
- § 13:19 Motions for procedural orders, generally
- § 13:22 Motions related to, or filed upon, entry of an appeal—Motions to waive docket fee or for leave to proceed in forma pauperis
- § 13:24 Motions related to, or filed upon, entry of an appeal—Motion to file lesser number than required of briefs and appendix
- § 13:37 Motions for recusal or disqualification of a judge
- § 13:43 Motions related to briefing—Motions for leave to exceed length limits

- § 13:47.50 Motion for transmission of “nonreproducible physical evidence or material the possession, transmission, or dissemination of which may constitute a violation of criminal law or a court order” *[New]*
- § 13:54 Motions to expedite an appeal—Illustrations of appellate decisions involving a discretionary expedited appeal
- § 13:65 Miscellaneous motions—Motion for Voluntary Dismissal of Appeal, Mass. R. A. P. 29(b)
- § 13:69.50 Motions for remote oral argument in panel cases in the appeals court *[New]*
- § 13:72 Motion to strike a notice of appeal

CHAPTER 14. PRESERVATION OF ERROR AND STANDARDS OF REVIEW ON APPEAL

I. PRESERVATION OF ERROR

- § 14:2 General principles applicable to objections

III. ADVOCACY AND APPLICATION OF THE STANDARD OF REVIEW

- § 14:10 Incorporating the standard of review in appellate briefs

CHAPTER 15. BRIEF WRITING: PURPOSE; FORMAT REQUIREMENTS; DRAFTING; AND PRESENTATION

- § 15:7 Writing the brief—Recognition of issues
- § 15:8 Writing the brief—“Adequate” appellate argument
- § 15:9 Waiver of issues
- § 15:13 Appellate Court expectations, ethical requirements, and standards for counsel and parties when preparing briefs
- § 15:17 Appellate Court expectations, ethical requirements, and standards for counsel and parties when preparing briefs—Staying current with changes in the law and technology
- § 15:24 Format requirements of appellant briefs—Cover
- § 15:30 Format requirements of appellant briefs—References in briefs to the record
- § 15:31 Format requirements of appellant briefs—Statement of facts
- § 15:33 Format requirements of appellant briefs—Argument and legal authorities
- § 15:33.50 Joining in a brief of another party *[New]*
- § 15:34 Format requirements of appellant briefs—Insufficient appellate argument
- § 15:36 Format requirements of appellant briefs—Using photographs, illustrations, and tables in a brief
- § 15:39 Format requirements of appellant briefs—Signature block
- § 15:40 Format requirements of appellant briefs—Addendum

TABLE OF CONTENTS

§ 15:42	Format requirements of appellant briefs—Certificate of service
§ 15:45	The record appendix—Contents
§ 15:51	Number of copies of the brief and record appendix— Appeals Court
§ 15:61	Appellant’s reply brief—Format
§ 15:62	Appellant’s reply brief—Sur-reply briefs
§ 15:66	Post-briefing filings—Supplemental citation, Rule 16(l) letter
§ 15:76	Brief of an amicus curiae—Motion for leave to file
§ 15:79	Brief of an amicus curiae—Contents—Statement of interest
§ 15:80	Brief of an amicus curiae—Disclosure of interest
§ 15:82	Brief of an amicus curiae—Content
§ 15:85	Brief of an amicus curiae—Amicus requesting access to impounded materials to prepare brief <i>[New]</i>

CHAPTER 16. ORAL ARGUMENT

§ 16:1	Introduction to oral argument
§ 16:2.50	How to prepare for a remote videoconference oral argument <i>[New]</i>
§ 16:8	Oral arguments—Submission on the briefs without oral argument
§ 16:9	Oral arguments in the Appeals Court
§ 16:12	Oral argument in the Appeals Court—Staggered oral argument times <i>[Retitled]</i>
§ 16:13	Overview of the courtroom during oral argument
§ 16:15	The oral argument—Time allowed for argument
§ 16:17	The oral argument—Order and scope of argument
§ 16:20	The oral argument—The virtue and requirement of candor
§ 16:21	The oral argument—Preservation of impounded or confidential information
§ 16:25	Argument of amicus curiae
§ 16:26	Impact of statements made at oral argument
§ 16:31	Post-argument and post-panel submission of authorities and arguments—Generally
§ 16:35	Recordings of oral argument

PART VII. THE APPELLATE COURT DECISION AND POST-DECISION PRACTICE

CHAPTER 17. DECISION-MAKING PROCESS AND TIMELINE

§ 17:3	Scope of decision
§ 17:6	Rescript opinions
§ 17:9	Summary dispositions (Appeals Court Rule 23.0, formerly known as Appeals Court Rule 1:28)—Overview
§ 17:16	Concurring opinions
§ 17:17	Dissenting opinions
§ 17:23	Supreme Judicial Court may transfer case to Appeals Court

§ 17:24 The Reporter of Decisions

CHAPTER 18. POST-DECISION PROCEDURES

- § 18:9 Motion for reconsideration or modification of decision—Oral argument on the motion
- § 18:11 Motion for reconsideration or modification of decision—Order on motion
- § 18:14 Requesting Appeals Court to publish a Rule 23.0 Summary Disposition
- § 18:15 Appeals Court en banc review

CHAPTER 19. APPLICATION FOR FURTHER APPELLATE REVIEW

- § 19:1 Overview and purpose
- § 19:11 Form and length of the application for further appellate review
- § 19:16 Effect of Supreme Judicial Court's allowance of application for further appellate review limited to specific issue(s)

CHAPTER 20. ISSUANCE OF THE RESCRIPT AND SUBSEQUENT PROCEEDINGS

- § 20:23 Execution of the judgment after entry of rescript in the lower court
- § 20:24 Prejudgment and postjudgment interest on civil judgments

CHAPTER 21. APPELLATE ATTORNEY'S FEES AND COSTS

- § 21:2 Request for award of appellate attorney's fees is made in Appellate Court, not Trial Court
- § 21:6 Sources of authority to impose attorney's fee awards in civil cases—General Laws c. 211A, § 15 (double costs)
- § 21:10 Specific statutory authorizations for attorney's fees
- § 21:11 Authority for the appellate court to award reimbursement of attorney's fee awards in criminal cases—Massachusetts Criminal Procedure Rule 15(d)
- § 21:39 Costs recoverable—Post-judgment interest
- § 21:44 Costs recoverable—Hearing if dispute as to reasonableness of costs
- § 21:51 Illustrations of statutes requiring or authorizing award of costs

TABLE OF CONTENTS

**PART VIII. SINGLE JUSTICE
JURISDICTION AND PRACTICE IN
THE SUPREME JUDICIAL COURT**

**CHAPTER 23. SINGLE JUSTICE
PROCEEDINGS IN THE SUPREME
JUDICIAL COURT**

I. INTRODUCTION

§ 23:1 Overview of the single justice session

**II. JURISDICTION OF SUPREME JUDICIAL
COURT AND AUTHORITY OF THE SINGLE
JUSTICE**

§ 23:5 Authority of Supreme Judicial Court single justice to reserve
and report—Civil matters

§ 23:7 Authority of Supreme Judicial Court single justice to transfer a
matter

§ 23:8 Hearings of the Single Justice

**III. GENERAL SUPERINTENDENCE (G.L. c. 211,
§ 3)**

§ 23:9 Overview

§ 23:10 Petitions under G.L. c. 211, § 3

§ 23:11 Petitions under G.L. c. 211, § 3—Demonstration of a
substantial claim of a violation of a substantive right

§ 23:12 Petitions under G.L. c. 211, § 3—Establishing that no
adequate, alternative remedy exists

§ 23:13 Petitions under G.L. c. 211, § 3—Adequate, alternative
remedy—Interlocutory orders

§ 23:16 Petitions under G.L. c. 211, § 3—Adequate, alternative
remedy—Circumstances where no adequate, alternative
remedy exists

**V. MISCELLANEOUS ACTIONS, APPEALS, AND
MATTERS**

§ 23:54 Extraordinary writs and civil actions in their nature

§ 23:56 Civil action in the nature of mandamus (G.L. c. 249, § 5)

§ 23:61 Miscellaneous statutes and matters

PART IX. SINGLE JUSTICE JURISDICTION AND PRACTICE IN THE APPEALS COURT

CHAPTER 24. PETITIONS FOR INTERLOCUTORY RELIEF (G.L. C. 231, § 118, FIRST PAR.)

- § 24:1 Governing authority—In general
- § 24:1.50 Distinctions between petitions under G.L. c. 211, § 3, and petitions under G.L. c. 231, § 118, first par *[New]*
- § 24:4 Governing authority—Definition of an “interlocutory order”
- § 24:4.50 Difference between an appeal and a petition *[New]*
- § 24:6 Format and procedure—Time limit to file petition
- § 24:8 Format and procedure—Interplay of petition under G.L. c. 231, § 118, first par., and motions for reconsideration in the trial court
- § 24:9 Format and procedure—Effect of failure to file G.L. c. 231, § 118 petition
- § 24:12 Single justice review—Limit on single justice’s authority
- § 24:13 Single justice review—Single justice standard of review of non-injunctive interlocutory order
- § 24:14 Single justice review—Single justice standard of review of a preliminary injunction under G.L. c. 231, § 118, first paragraph
- § 24:17 Temporary restraining order
- § 24:17.50 Housing court department authority to grant temporary restraining order *[New]*
- § 24:19 Appellate court review of a single justice’s ruling on a petition filed pursuant to G.L. c. 231, § 118, first paragraph

CHAPTER 25. MOTIONS FOR A STAY OF EXECUTION OF JUDGMENT OR SENTENCE PENDING APPEAL

I. GOVERNING AUTHORITY

A. CIVIL AND CRIMINAL CASES

- § 25:1 In general
- § 25:2 Filing in the trial court in the first instance
- § 25:3 Format and procedure
- § 25:4 Distinction between an order of contempt and a judgment of contempt

B. CIVIL CASES

- § 25:5 Generally
- § 25:6 Automatic stay

TABLE OF CONTENTS

- § 25:7 Civil standard for stay of judgment or order pending appeal
- § 25:9 Stay of summary process eviction

C. CRIMINAL CASES

- § 25:11 Criminal standard
- § 25:16 Stay of probation or suspended sentence

II. APPELLATE COURT REVIEW OF SINGLE JUSTICE

A. CIVIL MATTERS

- § 25:18 Procedure and mootness

B. CRIMINAL MATTERS

- § 25:19 Appeal from Trial Court order on motion for stay of execution of sentence
- § 25:21 Appellate court review of single justice's order on motion for a stay of execution of a sentence

CHAPTER 26. MOTIONS FOR EXTENSION OF TIME

- § 26:1 Introduction
- § 26:6 Motion to extend time to file a notice of appeal—Civil standard
- § 26:6.50 Filing to the single justice *[New]*
- § 26:9 Motion to extend time to docket appeal
- § 26:10 Authority of the Trial Court to extend time or dismiss appeal
- § 26:12 Motions for reconsideration may toll notice of appeal time period in criminal cases

CHAPTER 27. SINGLE JUSTICE AUTHORITY TO REPORT OR GRANT LEAVE TO TAKE INTERLOCUTORY APPEAL

- § 27:2 Governing authority—Authority of Supreme Judicial Court single justice to report in a civil matter
- § 27:4 Governing authority—Authority of Appeals Court single justice to report

CHAPTER 29. APPEAL OF DETERMINATION OF INDIGENCY STATUS OR ORDER ON MOTION TO WAIVE, REDUCE, OR STATE PAYMENT OF COURT FEES OR COSTS

- § 29:1 Overview

- § 29:7 The notice of appeal—Timing, filing by a self-represented party confined to an institution

CHAPTER 30. APPEAL FROM PROCEDURAL AMOUNT DISMISSALS

- § 30:1 Generally
§ 30:2 Commencement of action and procedural amount threshold
§ 30:3 Determination of whether to dismiss

CHAPTER 31. APPEALS UNDER THE “CHILDREN REQUIRING ASSISTANCE” STATUTE, G.L. C. 119, § 39I

- § 31:1 Appeals under children requiring assistance statute

CHAPTER 33. APPEAL FROM AWARD OF ATTORNEY’S FEES UNDER G.L. C. 231, § 6G

- § 33:1 Governing authority
§ 33:2 Format and procedure

CHAPTER 34. LIS PENDENS PROCEDURE AND APPEALS UNDER G.L. C. 184, § 15

- § 34:1 Introduction and history of lis pendens statute
§ 34:2 Lis pendens—Procedure—Filing of verified complaint and motion
§ 34:5 Lis pendens—Procedure—The claim, not its merits, controls
§ 34:11 Involuntary dissolution of memorandum of lis pendens and special motion to dismiss
§ 34:12 Appeal of order related to memorandum of lis pendens (G.L. c. 184, § 15(d))

CHAPTER 36. SUMMARY PROCESS PROCEEDINGS AND REVIEW OF APPEAL BONDS (G.L. C. 239, § 5)

- § 36:4 Answer and defenses *[Retitled]*
§ 36:8.50 Modifications to the Uniform Summary Process Rules *[New]*
§ 36:10 Proceedings in lower court—Notice of appeal and tolling of appeal period
§ 36:14 Denial of motion to waive bond
§ 36:18 Appeal bond review—The Appeals Court single justice’s decision and subsequent proceedings

CHAPTER 37. REVIEW UNDER G.L. C. 211, § 3 OF AN APPEALS COURT SINGLE JUSTICE’S ORDER

- § 37:1 Review under G.L. c. 211, § 3

TABLE OF CONTENTS

**PART X. PARTICULAR APPEALS IN
THE LOWER COURTS, COMMON
APPELLATE CASE TYPES AND
ISSUES, AND APPELLATE
PROCEDURE IN THE FEDERAL
COURTS**

**A. APPEALS TO AND FROM THE “LOWER
COURTS”**

**CHAPTER 39. APPELLATE DIVISIONS OF
THE DISTRICT COURT AND BOSTON
MUNICIPAL COURT**

III. JURISDICTION AND AUTHORITY

§ 39:3 Jurisdiction and authority

**IV. PROCEDURE OUTSIDE OF THE DISTRICT/
MUNICIPAL COURTS RULES FOR
APPELLATE DIVISION APPEAL**

§ 39:5 Civil motor vehicle infraction appeals

§ 39:7 Interlocutory appeals to single justice

**V. PROCEDURE UNDER THE DISTRICT/
MUNICIPAL COURTS RULES FOR
APPELLATE DIVISION APPEAL**

§ 39:11 Notice of appeal and filing fee

§ 39:15 Methods of appeal—Appeal on the record of the proceedings
under Rule 8C

§ 39:20 Report by trial judge

**VII. FURTHER APPEAL TO THE APPEALS
COURT AND SUPREME JUDICIAL COURT**

§ 39:22 Further appeal to the Appeals Court and Supreme Judicial
Court

**CHAPTER 40. APPEALS FROM THE
APPELLATE TAX BOARD**

§ 40:2 Jurisdiction of the Appellate Tax Board

§ 40:13 Appellate court’s standard of review

CHAPTER 42. APPEALS FROM CONTRIBUTORY RETIREMENT APPEAL BOARDS

II. APPEALS BEFORE THE CONTRIBUTORY RETIREMENT APPEAL BOARD

- § 42:16 Appellate review in the Massachusetts Appellate Courts
- § 42:21 Regular compensation

B. APPEALS IN THE FEDERAL COURTS

CHAPTER 44. JURISDICTION AND PROCEDURE OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

II. INITIATING AN APPEAL

- § 44:3 Preliminary steps

III. POST-INITIATION FILINGS AND MOTION PRACTICE

- § 44:16 The record on appeal

Volume 41A

C. APPELLATE CASE TYPES

CHAPTER 46. ATTORNEY DISCIPLINE APPEALS

- § 46:3 No right to counsel
- § 46:7 Contents of the brief to the Board
- § 46:8 Briefs opposing appeals
- § 46:9 The Board's decision
- § 46:13 Appeal of a decision of the single justice, S.J.C. Rule 2:23

CHAPTER 47. REVIEW OF ORDERS INVOLVING BAIL

- § 47:2 Statutory factors in bail determinations
- § 47:3 Revocation or revision of bail determination
- § 47:7 Review by the single justice of the Supreme Judicial Court

TABLE OF CONTENTS

CHAPTER 48. CHILD WELFARE APPEALS

III. CONSTITUTIONAL CONSIDERATIONS

§ 48:4 Substantive due process rights

§ 48:5 Procedural due process rights

IV. COMMON ISSUES IN CHILD WELFARE APPEALS

§ 48:7 Common issues in child welfare appeals

CHAPTER 49. APPEALS OF CIVIL COMMITMENT ORDERS FOR ALCOHOL AND SUBSTANCE USE DISORDER

§ 49:1 Appeals of Civil Commitment Orders for Alcohol and Substance Use Disorder

CHAPTER 50. APPEALS OF CIVIL COMMITMENT ORDERS OF PERSONS WITH MENTAL ILLNESS

§ 50:1 Appeals of Civil Commitment Orders of persons with mental illness

CHAPTER 51. APPEALS OF CIVIL COMMITMENT ORDERS OF SEXUALLY DANGEROUS PERSONS

§ 51:1 Appeals of Civil Commitment Orders of sexually dangerous persons

CHAPTER 53. CONTEMPT

§ 53:1 Overview and importance of contempt

§ 53:9 Summary criminal contempt criteria (Mass. R. Crim. P. 43[a])

CHAPTER 55. FIREARM LICENSE OR PERMIT APPEALS

§ 55:1 Firearm license or permit appeals

CHAPTER 56. JUDICIAL DISCIPLINE APPEALS

§ 56:2 Proceedings before the Judicial Conduct Commission

§ 56:3 Review in the Supreme Judicial Court

CHAPTER 57. APPEALS IN MEDICAL MALPRACTICE CASES

§ 57:1 Overview

- § 57:3 Appellate issues arising from a medical malpractice tribunal
- § 57:6 Appellate issues arising from a medical malpractice tribunal—Appellate review of tribunal decision
- § 57:8.50 Statute of limitations and statute of repose issues *[New]*
- § 57:10 Appeals from a judgment—Common topics raised on appeal following a trial—Expert testimony
- § 57:11 Appeals from a judgment—Common topics raised on appeal following a trial—Evidentiary rulings

CHAPTER 58. CIVIL MOTOR VEHICLE INFRACTIONS

- § 58:2 Hearing before a clerk magistrate
- § 58:3 Appeal to a Judge
- § 58:4 Appeal to the Appellate Division
- § 58:5 Appeal to the Appeals Court

CHAPTER 59. APPEALS OF ORDERS ENTERED IN G.L. C. 209A ABUSE PREVENTION PROCEEDINGS

- § 59:1 Appeals of orders entered in G.L. c. 209A abuse prevention proceedings—Overview
- § 59:2 Application and proceedings on an application for abuse prevention order
- § 59:3 Standard of review on appeal
- § 59:6 Mootness

CHAPTER 60. APPEALS OF HARASSMENT PREVENTION ORDERS, G.L. C. 258E

- § 60:1 Appeals of harassment prevention orders, G.L. c. 258E—Overview
- § 60:2 Proof of “harassment”

CHAPTER 61. APPEALS FROM EXTREME RISK PROTECTION ORDERS

- § 61:1 Appeals from extreme risk protection orders

CHAPTER 62. APPEALS INVOLVING THE ANTI-SLAPP LAW

- § 62:1 The Anti-SLAPP law—Overview

CHAPTER 64. APPEALS FROM SEX OFFENDER REGISTRY BOARD CLASSIFICATIONS

- § 64:1 Introduction
- § 64:3 Administrative hearing
- § 64:5 Appeals to the appellate courts; standard of review

TABLE OF CONTENTS

- § 64:6 Constitutional issues
- § 64:8 Right to funds for an expert; weight of expert testimony

CHAPTER 66. APPEALS FROM MUNICIPAL BOARD DECISIONS

II. PLANNING BOARDS

B. CHALLENGING PLANNING BOARD ACTION UNDER THE ZONING ACT

- § 66:17 Standing for appeals under the Zoning Act
- § 66:18 Filing deadlines and procedures under the Zoning Act

D. COMMON APPELLATE TOPICS

CHAPTER 68. APPEALS IN CIVIL CASES—DISCOVERY ORDERS

- § 68:1 Appeals in civil cases—Discovery orders

CHAPTER 69. APPEAL FROM ORDER OF DISQUALIFICATION OF ATTORNEY OR LAW FIRM

- § 69:2 Appeal from order of disqualification of attorney or law firm—Criminal case
- § 69:3 Motions to disqualify attorney or law firm—Overview

CHAPTER 70. ELECTRONIC FILING IN THE MASSACHUSETTS APPELLATE COURTS

- § 70:3 Electronic filing in the Supreme Judicial Court
- § 70:4 Electronic filing—Rules and standing orders

CHAPTER 71. ISSUES CONCERNING SELF-REPRESENTED PARTIES

- § 71:1 Right to represent self
- § 71:2 Self-represented litigants held to same standards
- § 71:3 Limitations on a self-represented party
- § 71:5 A represented litigant's pro se filings must be accepted by the clerk but the court may strike or take no action
- § 71:6 Requests to Litigate Anonymously *[New]*

CHAPTER 72. RETROACTIVE AND PROSPECTIVE APPLICATION OF LAW

- § 72:1 Retroactive and prospective application of law
- § 72:2 Retroactive and prospective application of law—Decisional law and common law

- § 72:6 Decisional law interpreting a statute or court rule
- § 72:9 Retroactive and prospective application of law—Decisional law and common law—Criminal constitutional rules—General principles
- § 72:11 Retroactive and prospective application of law—Statutory law

CHAPTER 73. DOCTRINES OF RES JUDICATA (CLAIM PRECLUSION) AND COLLATERAL ESTOPPEL (ISSUE PRECLUSION)

- § 73:2 Comparison and development of doctrines
- § 73:8 Claim preclusion (res judicata)—Elements
- § 73:21 Interlocutory orders and issue preclusion
- § 73:30 Privity
- § 73:36 Direct estoppel

CHAPTER 74. STATUTORY CONSTRUCTION

I. CONSTRUCTION

A. CONSTRUCTION OR INTERPRETATION IN GENERAL

- § 74:1 Construction or interpretation in general

C. AMBIGUITY

- § 74:10 Ambiguity in criminal cases: Rule of lenity

D. ELEMENTS OF LANGUAGE

- § 74:11 Definitional provisions
- § 74:20 Illustrations of meaning of words
- § 74:21 Expressio unius est exclusio alterius (The Expression of One is the Exclusion of Others) (Maxim of Negative Implication) [Retitled]

E. STATUTE AS A WHOLE

- § 74:25 Superfluosness
- § 74:26 Conflict; irreconcilability
- § 74:27 Similarity or difference

G. CONSTRUCTION WITH REFERENCE TO OTHER LAW

1. Existing Law

- § 74:37 Change in the common law

TABLE OF CONTENTS

2. Other Statutes

§ 74:42 Interpretation of multiple statutes together—Relation of Federal and State statutes

3. Statute's Relationship to the Constitution

§ 74:45 Presumption of constitutionality

I. CONSTRUCTION OF PARTICULAR TYPES OF STATUTES

§ 74:55 Agency regulations

II. OPERATION AND EFFECT

§ 74:57 Absurdity

VII. MISCELLANEOUS

§ 74:73 Remedial Statutes *[New]*

E. MISCELLANEOUS APPELLATE TOPICS AND ISSUES

CHAPTER 75. REVIEW OF ORDER ON CLASS ACTION CERTIFICATION

§ 75:1 Review of order on class action certification

CHAPTER 76. APPEALS INVOLVING NUISANCE OR DANGEROUS DOG ORDERS

§ 76:1 Appeals involving nuisance or dangerous dog orders—Introduction

§ 76:2 Complaint and hearing authority determination

CHAPTER 78. JUDICIAL NOTICE ON APPEAL

§ 78:1 Judicial notice on appeal

§ 78:2 Judicial notice on appeal—Court records and prior proceedings

§ 78:4 Judicial notice on appeal—Judicial notice of law

CHAPTER 79. RECUSAL OR DISQUALIFICATION OF A JUDGE

§ 79:1 Recusal or disqualification of a judge

CHAPTER 80. RELIGIOUS DISPUTES

§ 80:1 Religious disputes