

**LIST OF DOCUMENTS IN TRIAL ATTORNEY APPEALS PACKET  
FOR COMMITMENT CASES**

1. Memo to Attorneys on Filing Notices of Appeal in Commitment Cases
2. Sample Closing Letter – Commitment Only
3. Sample Closing Letter – Commitment and 8B
4. Checklist for Trial Attorneys filing Notices of Appeal in Commitment Cases
5. Sample Notice of Appeal
6. Sample Motion to Waive Fees Associated with Appeal
7. Affidavit in Support of Motion to Waive Fees
8. Order Form for Recording –either paper form for CD or cassette or through “For the Record” (FTR) digital recording online request.
9. Sample Appellate Intake Form

MEMO

To: Mental Health Trial Attorneys

From: CPCS MHLA Appeals Unit (Karen Owen Talley and Devorah Borenstein)

Re: Filing a Notice of Appeal from a 7/8 or 8B in the District Court

Date: March 2018

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A client's right to appeal from rulings of law in civil commitment/involuntary treatment proceedings in the District Court is preserved by timely filing a Notice of Appeal (NOA). Respondents must file the NOA with the clerk of the District Court within 10 days of entry of judgment.<sup>1</sup> The Appellate Division of the District Court always has the discretion to dismiss an appeal due to an insufficient NOA. This includes NOAs that do not articulate the grounds of appeal.

Notices of Appeal filed in the District Court for Appellate Division appeals need to be somewhat more specific than those filed in the Appeals Court. Dist./Mun. Ct. R.A.D.A. 3(c) requires that the NOA:

1. identify the party or parties taking the appeal,
2. state concisely the issues of law presented for review,
3. identify the judgment, ruling, finding, decision or part thereof being appealed, and,
4. attach, in the case of rulings being appealed, a copy of the motion, request for ruling or proof of evidence giving rise to such ruling.

A NOA that only recites that the Appellant is "aggrieved by certain opinions, rulings, directions and judgments of the Court" is too vague under Dist./Mun. Ct. R.A.D.A. 3(c)(2). Such a generalized statement does not indicate the issues of law that an Appellant wants the court to review. Therefore, always state the grounds with clarity. If the only issue is insufficiency of the

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<sup>1</sup> Dist./Mun. Ct. R.A.D.A. 3(a), 4(a). Note that the time is *7 days* for a section 35 commitment.

evidence, then that is the issue on appeal. For example, where insufficiency of the evidence is the issue on appeal, the NOA might state as follows:

1. The evidence presented at trial was insufficient as a matter of law to support the Court's finding beyond a reasonable doubt that failure to retain Appellant-Respondent at ABC Hospital would create a "likelihood of serious harm," by reason of mental illness. G.L. c. 123, s. 1 and s. 8(a); Worcester State Hospital v. Hagberg, 374 Mass. 271, 272, 276-277 (1978); In re G.P., 473 Mass. 112, 127-128 (2015).
2. The evidence presented at trial was insufficient as a matter of law to support the Court's finding beyond a reasonable doubt that there exists no less restrictive alternative to the Appellant-Respondent's involuntary civil commitment, said finding being a prerequisite for commitment under G.L. c. 123. Commonwealth v. Nassar, 380 Mass. 908, 917-918 (1980); Worcester State Hospital v. Hagberg, 374 Mass. 271, 272, 276-277 (1978).

If you use a template for your Notice of Appeal, be sure to amend it to reflect the particular client's situation. For example, an appeal of a commitment to a DMH or private facility should not include references to the failure to prove the need for "strict security" as that only applies to commitments to Bridgewater State Hospital.

**Remember – there are no “dumb” questions, so please don't hesitate to call or e-mail :**

Karen at: [ktalley@publiccounsel.net](mailto:ktalley@publiccounsel.net) or 508-583-0560

Devorah at: [dborenstein@publiccounsel.net](mailto:dborenstein@publiccounsel.net) or 617 -516-5826

## SAMPLE CLOSING LETTER - COMMITMENT ONLY

Dear [client]

I am writing to inform you of the outcome of your commitment hearing. At the hearing held on \_\_\_\_\_ the judge committed you to \_\_\_\_\_ Hospital for a period of *up to* six months. The judge was convinced beyond a reasonable doubt that: 1) you have a mental illness; 2) that you require hospitalization for that mental illness; 3) that if you are not hospitalized it is likely you would harm yourself or others.

Now that the hearing is over, it is my duty to inform you of your appellate rights. They are as follows:

**First**, if the court made an error of law at your hearing, you can appeal to the Appellate Division of the District Court under G.L. c. 123 § 9(a). This Notice of Appeal must be filed within 10 days of when the commitment order was entered. This type of appeal generally takes a long time to be heard and may not be decided by an appellate court until after you are discharged from the Hospital. However, if you would like me to file a Notice of Appeal to preserve your right to this type of appeal, I will do that for you.

**Second**, you also have the right to file an application for discharge with the Superior Court under G.L. c. 123 § 9(b). This type of appeal to the Superior Court is often a better method to challenge a commitment than a section 9(a) appeal to the Appellate Division. While a 9(b) appeal to the Superior Court can be a better way to challenge your commitment, it is helpful to wait at least a short period of time before filing it. This helps you to show that there has been a “change in circumstances” that would support your release. If you want to file a 9(b) appeal in the future, you should call CPCS at 617-988-8341.

Now that your commitment case is over, I am no longer representing you and will close out your file. However, if you have any questions about this letter, or want to exercise any of the appellate rights outlined above, you should feel free to contact me at \_\_\_\_\_. You may also contact CPCS directly at any time during your hospitalization at 617-988-8341.

Sincerely,

Your attorney

## SAMPLE CLOSING LETTER - COMMITMENT AND 8B

Dear [client]

I am writing to inform you of the outcome of your commitment and medication hearings. At the hearing held on \_\_\_\_\_ the judge committed you to \_\_\_\_\_ Hospital for a period of *up to* six months. The judge was convinced beyond a reasonable doubt that: 1) you have a mental illness; 2) that you require hospitalization for that mental illness; 3) that if you are not hospitalized it is likely you would harm yourself or others.

At the hearing held on \_\_\_\_\_, the judge also determined that you are currently not legally competent to make decisions about treatment with anti-psychotic medications. The judge also ruled that if you *were* competent, you would agree to take anti-psychotic medication. Now that there is a court order in place, this means that while you are at \_\_\_\_\_ Hospital, you can be forced to take your prescribed medication if you refuse to take them voluntarily.

Now that the hearing is over, it is my duty to inform you of your appellate rights. They are as follows:

**First**, if the court made an error of law at your hearing, you can appeal to the Appellate Division of the District Court under G.L. c. 123 § 9(a). This Notice of Appeal must be filed within 10 days of when the commitment order was entered. This type of appeal generally takes a long time to be heard and may not be decided by an appellate court until after you are discharged from the Hospital. However, if you would like me to file a Notice of Appeal to preserve your right to this type of appeal, I will do that for you.

**Second**, you also have the right to file an application for discharge with the Superior Court under G.L. c. 123 § 9(b). This type of appeal to the Superior Court is often a better method to challenge a commitment than a section 9(a) appeal to the Appellate Division. You can also file a 9(b) to try and convince the Superior Court that you are now competent to make your own treatment decisions. While a 9(b) appeal to the Superior Court can be a better way to challenge your commitment, it is helpful to wait at least a short period of time before filing it. This helps you to show that there has been a "change in circumstances" that would support your release. If you want to file a 9(b) appeal in the future, you should call CPCS at 617-988-8341.

**Third**, if you have serious side effects or other reasons to believe that the judge would change his or her decision regarding your treatment plan, these issues can sometimes be brought back for review in the District Court.

Now that your commitment case is over, I am no longer representing you and will close out your file. However, if you have any questions about this letter, or want to exercise any of the appellate rights outlined above, you should feel free to contact me at \_\_\_\_\_. You may also contact CPCS directly at any time during your hospitalization at 617-988-8341.

Sincerely,

Your attorney

CPCS MENTAL HEALTH LITIGATION DIVISION  
TRIAL COUNSEL APPEALS CHECKLIST

1. After an order of commitment and/or an 8B treatment order, discuss with your client his or her appellate rights.
2. Discuss the difference between a 9(a) appeal and a 9(b) “Application for Discharge.”
3. If your client wants a 9(b) to be filed, contact the Boston office about assigning counsel for the 9(b).
4. If your client wants a 9(a) to be filed:
  - a. File a Notice of Appeal in the trial court. (See attached memo). You only have 10 days after the entry of the judgment. If it is a Section 35 appeal, you only have 7 days.
  - b. File a motion to waive the filing fee in the trial court. (See attached sample). You only have 10 days after the entry of the judgment. If it is a Section 35 appeal, you only have 7 days.
  - c. Order the recording of the relevant proceeding (emergency hearing, commitment hearing, 8B hearing, etc.) using either a paper form or “For the Record” depending on what that particular court requires. (See attached forms).
  - d. Submit an appellate assignment intake form to CPCS Boston via [mhappeals@publiccounsel.net.](mailto:mhappeals@publiccounsel.net), including the Notice of Appeal and any other relevant pleadings. *Please be sure to include client contact information upon release.*
5. If the client seems most interested in a 9(b) but you think there is an important legal issue that should be brought to the attention of the appellate courts, consider asking the client’s permission to file a 9(a) in addition to the 9(b).

COMMONWEALTH OF MASSACHUSETTS  
DISTRICT COURT DIVISION

Lowell, ss

Lowell District Court  
Docket No. XXX

\_\_\_\_\_  
XXX )  
          ) )  
          APPELLANT-RESPONDENT) )  
          ) )  
v.          ) ) NOTICE OF APPEAL  
          ) )  
XXX HOSPITAL ) )  
          APPELLEE-PETITIONER ) )  
\_\_\_\_\_) )

Appellant-Respondent, XXX, gives notice through her attorney pursuant to G.L. c. 123, § 9(a) that she is appealing from an Order of this Court (XXX, J.), dated XXX, 2017, which commits her to XXX Hospital for a period up to 6 months, pursuant to G.L. c. 123, s. 7&8, and authorizes medical treatment pursuant to G.L. c. 123, § 8B.

As grounds for this Appeal, Appellant-Respondent asserts that:

1. The evidence presented at trial was insufficient as a matter of law to support the Court's finding beyond a reasonable doubt that failure to retain Appellant-Respondent at XXX Hospital would create a "likelihood of serious harm," i.e., a substantial and imminent risk of

serious injury, to self or others by reason of mental illness. G.L. c. 123, s. 1 and s. 8(a); Worcester State Hospital v. Hagberg, 374 Mass. 271, 272, 276-277 (1978); In re G.P., 473 Mass. 112, 127-128 (2015).

2. The evidence presented at trial was insufficient as a matter of law to support the Court's finding beyond a reasonable doubt that there exists no less restrictive alternative to the Appellant-Respondent's involuntary civil commitment, said finding being a prerequisite for commitment under G.L. c. 123. Commonwealth v. Nassar, 380 Mass. 908, 917-918 (1980); Worcester State Hospital v. Hagberg, 374 Mass. 271, 272, 276-277 (1978).

3. The Court erroneously denied Appellant-Respondent's Motion in Limine to Exclude Opinion Evidence from Hearing pursuant to G.L. c. 123, s. 8B, and admitted privileged communications into evidence over Appellant-Respondent's objections.

4. The admissible evidence was insufficient as a matter of law to support the Court's allowance of XXX Hospital's Petition for Determination of Incompetence and Authorization for



Medical Treatment pursuant to G.L. c. 123, s. 8B.

5. The Court improperly held Appellant-Respondent's Commitment Hearing on a locked inpatient commitment unit over Counsel's objection, in violation of the District Court's Judicial Standards and the requirement set forth in Kirk v. Commonwealth, 459 Mass. 67 (2011), that civil commitment hearings be open to the public.

Respectfully submitted,  
XXX  
Respondent-Appellant,  
By her attorney,

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XXXX

AFFIDAVIT OF SERVICE

Under the penalties of perjury, I certify that on XXX XX, 2017, I gave notice of the within Notice of Appeal via regular U.S. Mail to Petitioner-Appellee's counsel, XXX, at XXX.

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XXX



Respectfully submitted,  
By Appellant's Attorney,

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XXXXX

Dated:

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH

PLYMOUTH, s.s.

BROCKTON DISTRICT COURT  
Docket No.

\_\_\_\_\_  
IN THE MATTER OF )

JOHN DOE, )

Appellant-Respondent )  
\_\_\_\_\_ )

**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
WAIVER OF FEES**

I, XXXXX, counsel for JOHN DOE, Appellant-Respondent, do hereby aver that:

1. Appellant-Respondent JOHN DOE is presumed indigent by operation of Supreme Judicial Court Rule 3.10 (h) (iii) as a person who is subject to a civil commitment proceeding.
2. Appellant-Respondent was represented by Court-appointed counsel at trial.
3. The funds sought by means of the within Motion to Waive Fees associated with this appeal and the within Motion for Funds for Transcriber are necessary in order that Appellant-Respondent may properly prepare for and prosecute his appeal of the order committing him for up to one year to the strict security of the Bridgewater State Hospital. Denial of these Motions will place him at a substantial disadvantage in pursuing his appeal.
4. Appellant-Respondent has a right under the United States and Massachusetts Constitutions to the same access to the Courts as a person of means, including the right to file and prosecute an appeal. This especially is true in a case such as this in which the Court ordered his involuntary commitment under strict security at the Bridgewater State Hospital.
5. Allowance of the within Motions is also required pursuant to G.L. c.261, §27C in that waiving the filing fee and fee for obtaining the recording of the proceedings, in addition to

authorizing funds to retain a transcriber, are necessary to assure that the Appellant-Respondent is able to prosecute this appeal in as effective a manner as would be available to a person of means. *Commonwealth v. Lockley*, 381 Mass. 156 (1980).

6. Appellant-Respondent asserts that it cannot reasonably be argued that a person of means would ever knowingly choose not to expend his funds to prosecute an appeal in these matters. *See, e.g., Guardianship of a Mentally Ill Person*, Mass.App.Ct. No. 85-0018 Civ. (Dreben, J. 1/28/85).

The foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,  
JOHN DOE by his attorney,

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XXXXXX

Dated:

**CERTIFICATE OF SERVICE**

I, XXXX, hereby certify that I today caused the foregoing Affidavit of Counsel in Support of Motion to Waive Fees to be served, via first class postage prepaid mail, upon the following attorney of record in this matter:

XXXXX

Dated:

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**Committee for Public Counsel Services  
Mental Health Litigation Division**

44 Bromfield Street, Boston, MA 02108  
(617) 988-8341

APPELLATE ASSIGNMENT INTAKE FORM

Case Name: In re:  Docket Number:  Court:

Client's current address or location:

Client's contact information if/when released from hospital:

Trial Attorney:  Petitioner's Attorney:

Type of petition/hearing (include all relevant hearings):

Date(s) of hearings(s):  Date of Disposition:

Brief Summary of the Decision or Order: *(Please include name of Judge)*

Hrg held at McLean Hospital. J. \_\_\_\_\_ presiding. Pet 7/8 w: Dr. \_\_\_\_\_. Mtn for required finding: denied. Resp. 7/8 Ws: \_\_\_\_\_, Dr. \_\_\_\_\_. 7/8 Petition allowed. Pet 8B W: Dr. \_\_\_\_\_. Resp. 8B W: \_\_\_\_\_. 8B Pet. allowed.

Issues on appeal:

1) Hearsay - judge allowed testimony from pet. W re incidents leading to hospitalization and circumstances of a previous hosp. over objection, Hospital atty & judge seem to think that anything in the chart is admissible. 2) Evidence re unalleged risk of harm: J. allowed testimony, over objection, re hospitalization 5 yrs ago and pet. W saying \_\_\_ allegedly wrapped wire around neck (only risk of harm alleged was re impaired judgment), based on the judge's oral finding, I don't think this evidence factored into the decision. 3) Insufficient evidence: In response to my motion for required finding, the judge said that the standard for required finding is "light most favorable." I replied that they still have the burden of proof BRD, and the judge told me, no, it's light most favorable. She seemed to apply the wrong standard. At the close of all evidence, however, I still think there was insufficient evidence supporting commitment. Dr. \_\_\_\_\_'s testimony re risk was speculation (he said things like, if discharged, \_\_\_ could get frozen in the middle of the street or turn stove on and get frozen - re catatonic symptoms). Given the lack of facts in evidence supporting this conclusion, along with testimony from Dr. \_\_\_\_\_ and \_\_\_\_\_, I don't think the hospital proved their case BRD. Whoever gets this can look forward to the judge telling me during closing that my argument is ridiculous.

In the case of an appeal from an order of commitment, is this an appeal which you think may require a transcript? :

Have tapes/CDs been ordered, and date if so:


Deadlines, if any, as of the date of this request:

Collateral proceedings in other courts, if any (pending criminal case, etc.):

Counsel in collateral proceedings:

**Please submit this form and attach Notice of Appeal and all relevant pleadings to:**

Mental Health Appeals  
Email: [MHAppeals@publiccounsel.net](mailto:MHAppeals@publiccounsel.net)  
Fax: (617) 988-8488

<b>CD COPY ORDER FORM</b>		<b>COMMONWEALTH OF MASSACHUSETTS TRIAL COURT</b>					
Housing Court <input type="checkbox"/>	Boston Municipal Ct. <input type="checkbox"/>	Superior Court <input type="checkbox"/>	Juvenile Court <input type="checkbox"/>	District Court <input type="checkbox"/>	Probate & Family Court <input type="checkbox"/>	Land Court <input type="checkbox"/>	
Division	Division	Division	Division	Division	Division		
<b>PART I - TO BE COMPLETED BY PERSON PLACING ORDER</b>							
NAME OF PERSON PLACING ORDER			NAME OF CASE				
MAILING ADDRESS & ZIP CODE			DOCKET NUMBER OF CASE		NUMBER OF COPIES WANTED BY THIS PERSON <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3		
EMAIL ADDRESS			DATES OF RECORDINGS WANTED				
PHONE NO: (    )			MOST SERIOUS CHARGE IF CRIMINAL				
<p><i>Is proceeding is presently pending on appeal?</i></p> <input type="checkbox"/> Yes; in order that multiple copies may be made simultaneously whenever possible, I certify that I have notified all other parties of this request.  <input type="checkbox"/> No			<p><i>If proceeding was not open to the public or its record has been sealed or impounded:</i> I certify that I have entered an appearance in this matter as:</p> <input type="checkbox"/> counsel for _____, party, <input type="checkbox"/> a party appearing pro se, and that this copy will be used solely for an appeal, or to determine whether to appeal, in the same matter. (Copies of closed proceedings are available to other persons or for other purposes only upon motion.)				
<p><i>I agree to observe all restrictions on the use of CD copies found in applicable Rules of the Trial Court</i></p>							
_____			_____				
SIGNATURE OF PERSON PLACING ORDER			DATE				
<b>PART II - TO BE COMPLETED BY PERSON RECEIVING ORDER</b>							
COURT EMPLOYEE RECEIVING ORDER			COST WAIVED FOR:				
DATE ORDER RECEIVED			DATE ORDER SENT		<input type="checkbox"/> Judge <input type="checkbox"/> D.A. <input type="checkbox"/> Police Prosecutor <input type="checkbox"/> Attorney provided by CPCS <input type="checkbox"/> c. 261, §§ 27A-27G  <input type="checkbox"/> Other: _____		
<b>PART III - TO BE COMPLETED BY STAFF OF AOTC TAPE DUPLICATION CENTER</b>							
RECEIPT STAMP			COMMENTS				
DATE RETURNED TO COURT		BY		COST (including postage)			



**CASSETTE COPY ORDER FORM**

COURT

ORDER NUMBER

**Trial Court of Massachusetts  
District Court Department**



**PART I — TO BE COMPLETED BY PERSON PLACING ORDER**

NAME, ADDRESS AND ZIP CODE OF PERSON PLACING ORDER

NAME OF CASE

DOCKET NUMBER OF CASE

NUMBER OF COPIES WANTED BY THIS PERSON  1  2  OTHER

DATE(S) OF RECORDING(S) WANTED

MOST SERIOUS CHARGE, IF CRIMINAL, OTHERWISE, SUBJECT OF PROCEEDING

Copies are for:  2-Track Cassette Machine (1-7/8 IPS)  
 4-Track Cassette Machine (15/16 IPS)

*Proceedings are recorded on 4 separate tracks. The enhanced track separation available on 4-track copies will facilitate more accurate transcription. However, 4-track copies require a special 4-track cassette machine, and cannot be played on an ordinary (2-track) cassette player. By Trial Court policy, copies made for transcription on appeal will automatically be made in 4-track.*

NATURE OF PROCEEDING

- CRIMINAL BENCH TRIAL
- CRIMINAL JURY TRIAL
- PROBABLE CAUSE HEARING
- CRIMINAL SHOW CAUSE HEARING
- CMVI HEARING
- ABUSE PREVENTION ORDER
- DELINQUENCY
- CIVIL TRIAL
- OTHER (specify): \_\_\_\_\_

Is this proceeding presently pending on appeal?  YES  NO

If yes, in order that multiple cassette copies may be made simultaneously whenever possible,  
 I certify that I have notified all other parties of this request.  
(The green copy of this form may be used for this purpose.)

*If proceeding was not open to the public or its record has been sealed or impounded: I certify that I have entered an appearance in this matter as:*

- counsel for \_\_\_\_\_, a party,
- a party appearing pro se,

and that this cassette copy will be used solely for an appeal, or to determine whether to appeal, in the same matter.  
(Copies of closed proceedings are available to other persons or for other purposes only upon motion.)

I AGREE TO OBSERVE THE RESTRICTIONS ON THE USE OF SUCH CASSETTE COPIES FOUND IN DISTRICT COURT SPECIAL RULE 211 (see over).

X \_\_\_\_\_  
SIGNATURE OF PERSON PLACING ORDER

\_\_\_\_\_  
DATE ORDER PLACED

**PART II — TO BE COMPLETED BY CLERK-MAGISTRATE'S OFFICE**

TAPE NO.	BEGINNING INDEX NO.	ENDING INDEX NO.	JUDGE PRESIDING	DATE RECORDED	SPECIAL INSTRUCTIONS OR COMMENTS
.....	.....	.....	.....	.....	
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Request will be returned if tape and index numbers are not supplied.

COURT EMPLOYEE RECEIVING ORDER

COMMENTS

DATE ORDER RECEIVED

DATE ORDER SENT TO AODC

COST WAIVED FOR:

- JUDGE  D.A.  POLICE PROSECUTOR
- ATTY. PROVIDED BY CPCS  G.L. c. 261, §§ 27A-G
- OTHER (specify): \_\_\_\_\_

If more than one copy requested: Person placing order has been informed that only one copy is provided cost-waived, and has agreed to pay for the additional copies desired.

**PART III — TO BE COMPLETED BY THE ADMINISTRATIVE OFFICE OF THE DISTRICT COURT**

AODC RECEIPT STAMP

COMMENTS

DATE RETURNED TO COURT

BY

COST

\$ \_\_\_\_\_, plus postage