**MEMO**

To: Mental Health Trial Attorneys

From: CPCS MHLD Appeals Unit (Karen Owen Talley and Devorah Vester)

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

Date: May 2021

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A client’s right to appeal from rulings of law in civil commitment/involuntary treatment proceedings in the District Court or Boston Municipal Court is preserved by timely filing a Notice of Appeal (NOA). Respondents must file the NOA with the clerk of the District or Municipal Court within 10 days of entry of judgment.[[1]](#footnote-1)

Notices of Appeal filed in the District or Municipal Court to begin an appeal to the Appellate Division 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, including any significant pre-trial rulings, such as the denial of a request for a continuance or motion to dismiss. If the only issue is insufficiency of the 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); *Superintendent of Worcester State Hospital v. Hagberg*, 374 Mass. 271, 272, 276-277 (1978); *Matter of 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); *Superintendent of 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 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 be in touch. Email will get the quickest response:**

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Devorah at: dvester@publiccounsel.net

1. Dist./Mun. Ct. R.A.D.A. 3(a), 4(a). Note that the time is *7 days* for a section 35 commitment. [↑](#footnote-ref-1)