

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

*(revised August 2021)*

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. Sample Affidavit in Support of Motion to Waive Fees
8. Appellate Intake Form *(revised May 2021)*

**MEMO**

To: Mental Health Trial Attorneys

From: CPCS MHLA 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.<sup>1</sup>

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:

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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.

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:**

Karen at: [ktalley@publiccounsel.net](mailto:ktalley@publiccounsel.net)

Devorah at: [dvester@publiccounsel.net](mailto:dvester@publiccounsel.net)

## 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) you require hospitalization for that mental illness; and 3) 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 post-hearing rights. They are as follows:

**Error of law:** if you believe that 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). The Notice of Appeal must be filed **within 10 days** of the date on which the commitment order was entered. If you win the appeal, the court will vacate your commitment order. Generally speaking, however, many months go by before the Appellate Division hears argument on the appeal. It is also very likely that the court will not decide the appeal 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 an appeal, I will do that for you. CPCS will then appoint appellate counsel to represent you.

**Earlier release:** if you want to seek an earlier release, you also have the right to file an application for discharge with the Superior Court under G.L. c. 123, § 9(b). An application for discharge to the Superior Court is often a better method to challenge the actual commitment than an appeal to the Appellate Division. This is because it is asking a court to order your immediate discharge based on a significant change in circumstances following the commitment order. I recommend waiting at least a short period of time before filing a 9(b) application. This helps show that there has been a “change in circumstances” that would support your release. If you want to file an application for discharge, you should call CPCS at 617-988-8341.

**Treatment plan review:** 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

## 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) you require hospitalization for that mental illness; and 3) 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 post-hearing rights. They are as follows:

**Error of law:** if you believe that 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). The Notice of Appeal must be filed **within 10 days** of the date on which the commitment order was entered. If you win the appeal, the court will vacate your commitment order. Generally speaking, however, many months go by before the Appellate Division hears argument on the appeal. It is also very likely that the court will not decide the appeal 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 an appeal, I will do that for you. CPCS will then appoint appellate counsel to represent you.

**Earlier release:** if you want to seek an earlier release, you also have the right to file an application for discharge with the Superior Court under G.L. c. 123, § 9(b). An application for discharge to the Superior Court is often a better method to challenge the actual commitment than an appeal to the Appellate Division. This is because it is asking a court to order your immediate discharge based on a significant change in circumstances following the commitment order. I recommend waiting at least a short period of time before filing a 9(b) application. This helps show that there has been a “change in circumstances” that would support your release. If you want to file an application for discharge, 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 your post-hearing rights outlined above, 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**  
*(revised August 2021)*

1. After an order of commitment and/or an 8B treatment order has issued, discuss with your client his or her appellate rights.
2. Discuss the difference between an appeal under s. 9(a) and an “application for discharge” under s. 9(b).
3. If your client wants to file an application for discharge, contact the Boston office about assigning counsel for the 9(b).
4. If your client wants to file an appeal:
  - 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.
  - Together with the Notice of Appeal, file a Motion to Waive Filing Fees and Cost of Obtaining Recording. (See attached sample).
  - Send an appellate assignment intake form to mhappeals@publiccounsel.net, attaching 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 an application for discharge, 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 an appeal in addition to the application for discharge.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

DISTRICT COURT DEPARTMENT  
[city/town] Division  
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 Orders of this Court (XXX, J.), dated XXX, which commit her to XXX Hospital for a period up to XXX months, pursuant to G.L. c. 123, s. 7&8, and authorize 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); *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).
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.

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

\_\_\_\_\_  
XXXX

CERTIFICATE OF SERVICE

I certify that on this [DATE], I served the within "8C Appeal on the Record of Proceedings" via email and U.S. Mail to counsel for Appellee-Petitioner as follows:

Atty. [NAME]  
[ADDRESS 1]  
[ADDRESS 2]  
[TELEPHONE]  
[FAX]  
[EMAIL]

DATED: \_\_\_\_\_

\_\_\_\_\_  
[YOUR NAME]





Respectfully submitted,  
By Appellant's Attorney,

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XXXXX

Dated:



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

## APPELLATE ASSIGNMENT INTAKE FORM

Case Name:

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:

Judge:

Time of Hearing:

Courtroom #

Brief Summary of the Decision or Order:

*(Start and Stop)*

Issues on appeal:

Is this an appeal which you think may require a transcript? :

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

Counsel in collateral proceedings:

Would you like to receive a copy of the transcript?:

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

Mental Health Appeals  
Email: [MHAppeals@publiccounsel.net](mailto:MHAppeals@publiccounsel.net)

*Revised May 2021 - N. Twohig*