

CRIMINAL APPEAL REFERRAL

This form should be used for adult criminal cases only: appeal from criminal conviction after a trial or from a finding of a violation of probation after a contested hearing; or requests for counsel after a conditional plea or after a petition to proceed with an interlocutory appeal has been allowed.

DEFENDANT'S NAME _____ D.O.B. _____

ATTORNEY MAKING REFERRAL _____

ATTORNEY PHONE NUMBER _____ ATTORNEY EMAIL _____

DOES DEFENDANT SPEAK ENGLISH? Yes ☐ No ☐

IF NO, WHAT LANGUAGE? _____

LAST KNOWN ADDRESS/ PHONE#/ EMAIL/INSTITUTION (include ID number if possible)

NAME AND PHONE NUMBER FOR SECONDARY CONTACT FOR CLIENT

DEFENDANT'S AGE AT TIME OF ALLEGED OFFENSE(S) _____

WAS TRIAL COUNSEL: AN APPOINTED PDD STAFF ATTORNEY ☐ AN APPOINTED BAR ADVOCATE ☐
OR PRIVATELY RETAINED ☐

(If trial counsel was privately retained, we cannot assign an appellate attorney unless the court has found the client indigent, either by allowing a motion to be found indigent or allowing a motion for appointment of appellate counsel. Please submit the allowed motion with this form)

IS THIS AN INTERLOCUTORY APPEAL? YES ☐ NO ☐ IF SO, PLEASE LIST THE APPELLATE COURT
DOCKET NUMBER AND DATE ON WHICH THE SINGLE JUSTICE ALLOWED THE PETITION:

(An appellate attorney will be assigned only after the Single Justice has allowed a petition to proceed with an interlocutory appeal)

IS THIS A CONDITIONAL PLEA? Yes ☐ No ☐ IF SO, PLEASE ATTACH A COPY OF THE AGREEMENT
REQUIRED BY MASS. R. CRIM. P. 12(b)(6)

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TRIAL/PROBATION VIOLATION HEARING/ MOTION INFORMATION

COURT _____ JUDGE _____

HELD DATE: _____ D.A. (or P.O. for VOP hrg.) _____

INDICTMENT/
COMPLAINT NUMBER

CHARGE

DISPOSITION AND SENTENCE

PLEASE ATTACH A LIST WITH THE NAMES AND DOBs OF CO-DEFENDANTS, (ALLEGED) VICTIMS,
AND CIVILIAN WITNESSES

ISSUES FOR APPEAL/COMMENTS:

STAY OF EXECUTION PENDING APPEAL? ALLOWED ☐ DENIED ☐ NOT SOUGHT ☐

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IN YOUR OPINION, IS THIS APPEAL OF STRATEGIC IMPORTANCE (e.g., issue of first impression; unsettled area of the law; good opportunity to argue for a change in the law)? Yes ☐ No ☐

IF YES, PLEASE EXPLAIN WHY:

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POST-TRIAL ATTORNEY ACTION:

DATE OF SENTENCING: _____(date)

NOTICE OF APPEAL FILED: _____(date)

The Notice of Appeal (NOA) should be filed within 30 days of sentencing (not the date of verdict). Please refile the NOA after sentencing if it was filed prior to sentencing. The trial court retains jurisdiction to allow a motion to file a late NOA within 60 days of sentencing. Please file this motion and a notice of appeal if the NOA has not been filed within 30 days of sentencing but is within 60 days of sentencing. Even if the deadline for filing a notice of appeal in the trial court has passed, please send us the appeal referral form as soon as possible.

TRANSCRIPT ORDERED: _____ (date) **ATTACH A COPY OF THE TRANSCRIPT ORDER FORM**

PLEASE NOTE: Please order transcripts of all pre-trial evidentiary hearings, as well as non-evidentiary hearings that may figure in the appeal. Please make sure you are ordering transcripts, not just the recordings.

Pursuant to Rule 8(b)(1)(A) of the Rules of Appellate Procedure, trial counsel is required to order transcripts within 14 days of filing the notice of appeal and to file a copy of the transcript order with the clerk, and serve a copy on the other parties. The trial court’s administrative order sets out the procedure here: <https://www.mass.gov/trial-court-rules/trial-court-administrative-order-19-1-transcription-procedures-for-appellate#4-ordering-the-transcript-in-cases-other-than-child-welfare-proceedings>

You need not file a motion to withdraw and appoint appellate counsel (unless you have been privately retained). Mass. R. App. P. 3(e) requires that you remain counsel until the appellate attorney enters an appearance, after which you can file a notice of withdrawal. That rule also requires that you notify CPCS of the need to assign counsel, which is accomplished by sending us this appeal referral form.

The preferred practice for trial attorneys is to always file a notice of appeal and submit the appeal referral form, even when there are no obvious issues for appeal. The appellate attorney will discuss with the client whether or not to pursue an appeal.

EMAIL THIS FORM TO: appealform@publiccounsel.net

PLEASE REMEMBER TO ATTACH

- 1. A LIST WITH THE NAMES AND DOBs OF CO-DEFENDANTS, (ALLEGED) VICTIMS, AND CIVILIAN WITNESSES**
- 2. A COPY OF THE TRANSCRIPT ORDER FORM YOU HAVE SUBMITTED TO OTS**
- 3. THE SIGNED AGREEMENT IF THIS WAS A CONDITIONAL PLEA**

ORDERING TRANSCRIPTS FOR DIRECT APPEAL

- The Massachusetts Rules of Appellate Procedure and CPCS performance standards require that if your client wishes to appeal a conviction in an appointed case, trial counsel must order transcripts.
- All transcripts can be ordered directly from the Office of Transcription Services (OTS) here: https://macourtsystem.formstack.com/forms/transcript_order_form
- OTS maintains this page with their contact information and detailed instructions if needed: <https://www.mass.gov/info-details/committee-for-public-counsel-services-cpcs-staff-or-assigned-counsel-court-transcript-requester>
- CPCS will pay for all transcripts for cases on direct appeal. You do not need to file a motion for funds. You will need to provide your NAC number for the case on the order form.
- Please order transcripts for all substantive events in the case. In addition to the entire trial and sentencing, this includes motions to suppress, motions in limine that are argued and any other event where the parties had substantive discussions about the case. If you have a question about whether to order a hearing, please err on the side of ordering it.
- OTS requests that transcript orders have as much information as possible about each hearing. In addition to the parties and docket number, please provide the judge's name, witnesses names and courtrooms when possible. If possible, please also provide approximate times for each hearing. This will make the transcription process much smoother and allow your client's appeal to move along as quickly as possible.
- OTS also suggests ordering the recordings of these proceedings through FTR (<https://app.fortherecord.com/login>). This is not required to order the transcripts but it will make the process faster for your client. It can also make it easier to determine exact times for hearings.
- Once you have completed the order, file a copy of the order form with the trial court clerk's office.