

What is the fastest way to appeal a Massachusetts district court decision?

2 September 2015

The answer is the expedited appeal under Rule 8A of the Massachusetts District/Municipal Courts Rules for Appellate Division Appeals.

An appeal under this rule was designed to be the fastest of the three avenues of appeal of a district court decision, namely the expedited appeal under Rule 8A, the agreed statement of the case under Rule 8B, and the appeal on the record of the proceedings under Rule 8C, the latter having the most usual and customary procedure for appeals in general. Although an appeal under Rule 8B could technically be done quicker than one under Rule 8A, it requires agreement and significant cooperation with the opposing party.

So, if you want it fast, this is the way for you. But as the saying goes, be careful of what you wish for. First, a notice of appeal must be filed in the district court, the same court that issued the decision, within 10 days of the entry of final judgment. I stress entry of the decision and not when you receive it in the mail, which can be much later.

The notice of appeal must contain *inter alia* a concise statement of the issues to be decided on appeal, which cannot be changed later if proceeding under this rule. Drafting what will be the final statement of issues within 10 days, or less if you received the decision after the entry of the final judgment, is not easy. If you find yourself needing to change the statement of the issues upon later reflection, you must forfeit operating under this rule.

The next step under Rule 8A is filing the "Expedited Appeal," again in the district court, within 20 days of filing the notice of appeal. Essentially, it must contain everything necessary for the review to occur, except the brief. It allows the party to determine what is necessary and requires a certification of the same. Opposing parties have the right to object to proceeding under this rule, subject to possible sanctions if it is later deemed to have been in bad faith. The judge making the decision being appealed may determine the rule has not been complied with and order the appeal under Rule 8A terminated. If an objection is made by the opposing party, the process under Rule 8A ends and the appellant is left with Rule 8B and 8C to proceed under.

The next step if no one objects is to file 6 more copies of the Expedited Appeal package and the brief, again with the district court, within 25 days of filing the "Expedited Appeal." Although this may seem cumbersome, it is less demanding than Rule 8C. The benefit of proceeding under this rule is to avoid the filing of an appendix to accompany the brief required under Rule 8C, which can be daunting.

The clerk is supposed to transmit to the Appellate Division, which will decide the appeal, the materials upon the expiration of 60 days from the filing of the Expedited Appeal, whether or not it has received the brief. The Appellate Division, which is technically an

extension of the district court itself, can then set the matter for oral argument in a timely manner.

I am only giving a brief and limited overview of the process under Rule 8A; there are nuances and other details of the procedure not included in this blog post, which should be adhered to.

In the event that you find yourself in need of appealing a decision of the district court, do not wait. But call an experience attorney right away. My office is happy to talk to you.

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