

# **Introductory Overview of Massachusetts Single Justice Practice**

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Many jurisdictions are seeking methods to expedite the disposition of interlocutory rulings in which timeliness is essential. Also, some bar groups are seeking efficient ways to expand use of interlocutory appeals to resolve pretrial rulings that may be dispositive of the case.

Massachusetts permits a single associate justice of the state's Appeals Court or Supreme Judicial Court to review interlocutory rulings made by the trial courts. A condensed description of the Massachusetts procedure is presented below. The relevant statutory provisions and rules are contained as an appendix.<sup>2</sup>

## **Interlocutory Appeals to a Single Justice of the Appeals Court**

The Massachusetts Trial Court is divided into seven departments.<sup>3</sup> Interlocutory appeals of an order issued by a judge in four of these departments (the Superior Court, Land Court, Housing Court, and Probate and Family Court) may be appealed to a single justice of the Appeals Court under M.G.L. c.231, §118.4 The filing of such an appeal does not suspend execution of the order unless specifically ordered by the justice hearing the appeal. The statute includes two special provisions:

If an interlocutory appeal of a discovery order is denied, the justice hearing the appeal may require the petitioning party, the party's attorney, or both to pay the reasonable expenses of the opposing party including attorney's fees, unless "the petition was substantially justified or ... other circumstances make an award of expenses unjust."

If the appeal is from an order granting, continuing, modifying, or refusing,

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<sup>1</sup> This memorandum was prepared with the substantial assistance of Anne Skove, Esq., Knowledge Management Analyst, National Center for State Courts, and Barbara Berenson, Esq., Administrative Attorney, Supreme Judicial Court of Massachusetts

<sup>2</sup> For more information about Massachusetts single justice practice, please see the website of the Supreme Judicial Court single justice session, formally known as the Supreme Judicial Court for Suffolk County, [www.sjccountyclerk.com](http://www.sjccountyclerk.com). See also Honorable John M. Greaney and Neal Quenzer, Esq., "Supreme Judicial Court," and Maura S. Doyle, Esq., "Single Justice Practice in the Supreme Judicial Court," in *Appellate Practice in Massachusetts* (2<sup>nd</sup> ed., 2004).

<sup>3</sup> The Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Land Court, the Probate and Family Court, and the Superior Court Departments.

<sup>4</sup> Interlocutory appeals of orders issued by a judge in civil matters in the remaining three departments (Boston Municipal Court, District Court, and Juvenile Court) as well as interlocutory appeals of orders issued in any criminal case may be reviewed by the Supreme Judicial Court under M.G.L. c. 211, §3.

dissolving, or refusing to dissolve a preliminary injunction, the aggrieved party may appeal directly to the full Appeals Court or to the Supreme Judicial Court.<sup>5</sup>

### Interlocutory Appeals to a Single Justice of the Supreme Judicial Court

The Massachusetts Supreme Judicial Court's inherent common law and constitutional powers of general superintendence is codified by M.G.L. c. 211, § 3. The first paragraph of this statute grants the Supreme Judicial Court (SJC) extraordinary power to correct and prevent errors and abuses in both civil and criminal matters in all state courts. However, the majority of matters considered by the Supreme Judicial Court are criminal because the Appeals Court may hear interlocutory appeals in civil cases from four Trial Court Departments. Rulings made by a single justice of the Appeals Court can be appealed to a single justice of the Supreme Judicial Court under the general superintendence statute.

Chapter 211, § 3 places an important limitation on the court's power; relief may be granted only where "no other remedy is expressly provided." Thus, if an alleged error or abuse is remediable through the normal appellate process, or through some other available method of review, relief will ordinarily not be granted. The SJC also requires that a litigant seeking relief under c. 211, § 3, demonstrate a "substantial claim" of violation of "substantive rights." In this way, the Court reserves use of the general superintendence power for exceptional circumstances only and discourages litigants from attempting to invoke its extraordinary power in routine circumstances.<sup>6</sup>

The second paragraph of G.L. c. 211, § 3, grants the court the extraordinary power to address administrative matters throughout the court system generally. Decisions under this paragraph typically involve administrative and procedural matters affecting more than one court or more than one case.<sup>7</sup>

In addition to matters pursued under the court's general superintendence authority (c. 211, § 3), the single justice has jurisdiction over other matters including bar discipline matters, and certain miscellaneous matters where Massachusetts law confers exclusive jurisdiction on the single justice session.<sup>8</sup>

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<sup>5</sup> M.G.L. Ch.231 §118.

<sup>6</sup> Examples of petitions frequently filed under the superintendence statute include review of bail determinations, summary process actions, care and protection matters, and review of double jeopardy claims following a mistrial.

<sup>7</sup> Examples in recent years have included a decision allowing a trial judge to rehear a clerk's denial of an application for a criminal complaint and a decision providing that a defendant may challenge a finding of probable cause only by filing a motion to dismiss.

<sup>8</sup> In two instances in criminal proceedings, the single justice serves as a "gatekeeper" --i.e. a petitioner may ask a single justice for leave to appeal a lower court order. The first is from a motion to suppress; the second is from a denial of a motion for new trial following affirmance of a conviction for first degree murder.

Relief under c. 211, § 3 is sought by filing a petition and filing fee (or motion to waive the fee) in the SJC's single justice session. The petition must include:

- a. the procedural history;
- b. a brief description of the order subject to review;
- c. the grounds upon which review is necessary; and
- d. the relief sought.

Service requirements are somewhat relaxed, as many single justice matters are emergencies. A summons is not required. A certificate of service that includes the name and address of each party is required. The Clerk and assistant clerks coordinate a date for filing with opposing counsel. Many matters are decided on the papers without a hearing.

In acting on a petition under c. 211, § 3, a single justice may:

- a. determine the issue presented, and
  - i. allow the relief requested, in whole or in part;
  - ii. deny the petition;
- b. decline to act pending presentation of the issue to the lower court;
- c. reserve and report the case to the full court for a decision, in which case the matter ordinarily will be given full appellate review on the merits;
- d. remand the case to the trial court to establish a record or advise the trial court to proceed in a given manner;

Either party may appeal an adverse single justice decision to the full court. The appellant must file a notice of appeal within seven days, and must submit a brief memorandum explaining why review of the trial court decision cannot adequately be obtained on appeal from any adverse judgment in the trial court or by other available means.

In an appeal from a single justice's decision, the standard of review is very strict. The full court will affirm the decision unless it is shown that the single justice committed an abuse of discretion or made a clear error of law.

## **Appendix of Selected Rules and Statutes Governing Practice Before a Single Justice**

### **Massachusetts General Laws Ch. 211: § 3. Superintendence of inferior courts; power to issue writs and process**

The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws. In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section three C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy; and provided, further that general superintendence also shall not include the authority or power to exercise or supersede any of the powers, duties and responsibilities of the chief justice for administration and management, as established by section one of chapter two hundred and eleven B, in any general or special law except under extraordinary circumstances leading to a severe, adverse impact on the administration of justice; provided, that the majority of the supreme judicial court shall issue a written order that sets forth the basis for a finding that, absent such action, there would be a severe and adverse impact on the administration of justice in the commonwealth. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

### **Massachusetts General Laws Ch. 231: § 118. Temporary appellate relief from interlocutory orders; appeals to appeals court or supreme judicial court**

A party aggrieved by an interlocutory order of a trial court justice in the superior court department, the housing court department, the land court department or the probate and family court department may file, within thirty days of the entry of such order, a petition in the appropriate appellate court seeking relief from such order. A single justice of the appellate court may, in his discretion, grant the same relief as an appellate court is authorized to grant pending an appeal under section one hundred and seventeen. If the petition is filed with respect to a discovery order and is denied, the single justice may, after such hearing as the single justice in his discretion deems appropriate, require

the petitioning party or the attorney advising the petition or both of them to pay to the party who opposed the petition the reasonable expenses incurred in opposing the petition, including attorney's fees, unless the court finds that the filing of the petition was substantially justified or that other circumstances make an award of expenses unjust.

A party aggrieved by an interlocutory order of a trial court justice in the superior court department, the housing court department, the land court department or the probate and family court department, granting, continuing, modifying, refusing or dissolving a preliminary injunction, or refusing to dissolve a preliminary injunction, or a party aggrieved by an interlocutory order of a single justice of the appellate court granting a petition for relief from such an order, may appeal therefrom to the appeals court or, subject to the provisions of section ten of chapter two hundred and eleven A, to the supreme judicial court, which shall affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be just under the circumstances. An appeal under this paragraph shall be taken within thirty days of the date of the entry of the interlocutory order and in accordance with the Massachusetts rules of appellate procedure. Pursuant to action taken by the appellate court the cause shall be remanded to the trial court for further proceedings.

The filing of a petition hereunder shall not suspend the execution of the order which is the subject of the petition, except as otherwise ordered by a single justice of the appellate court.

### **Massachusetts Rule of Civil Procedure 1. Scope of Rules**

These rules govern the procedure before a single justice of the Supreme Judicial Court or of the Appeals Court, and in the following departments of the Trial Court: the Superior Court, the Housing Court, the Probate and Family Court in proceedings seeking equitable relief, the Juvenile Court in proceedings seeking equitable relief, in the Land Court, in the District Court and in the Boston Municipal Court, in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy and inexpensive determination of every action.

### **Massachusetts Supreme Judicial Court Rule 2:21. Appeal from Single Justice Denial of Relief on Interlocutory Ruling (Applicable to civil and criminal cases)**

(1) When a single justice denies relief from a challenged interlocutory ruling in the trial court and does not report the denial of relief to the full court, the party denied relief may appeal the single justice's ruling to the full court. Unless the court otherwise orders, the notice of appeal shall be filed with the Clerk of the Supreme Judicial Court for Suffolk County within seven days of the entry of the judgment appealed from. Unless the single justice or the full court orders otherwise, neither the trial nor the interlocutory ruling in the trial court shall be stayed.

(2) The appeal shall be presented to the full court on the papers filed in the single justice session, including any memorandum of decision. Eight copies of the record

appendix must be filed in the Office of the Clerk of the Supreme Judicial Court for the Commonwealth within fourteen days of the filing of the notice of appeal. The record appendix shall be accompanied by eight copies of a memorandum of not more than ten pages, double-spaced, in which the appellant must set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means. No response from the prevailing party shall be filed, unless requested by the court.

(3) This rule shall not apply to interlocutory appeals governed by Rule 15 of the Massachusetts Rules of Criminal Procedure.

(4) The full court will consider the appeal on the papers submitted pursuant to this rule, unless it otherwise orders.

**Massachusetts Supreme Judicial Court Rule 2:22. Petitions Under G.L. c. 211, § 3 (Applicable to civil and criminal cases.)**

Any petition seeking to invoke the general superintendency power of the court pursuant to G.L. c. 211, § 3, shall name as respondents and make service upon all parties to the proceeding before the lower court, including in criminal cases the Commonwealth through the District Attorney or Attorney General as appropriate. When the lower court is named as a respondent, service upon the lower court shall be made in accordance with Rule 4(d)(3) of the Rules of Civil Procedure by delivering a copy to the clerk of the lower court and to the Boston office of the Attorney General. Unless otherwise ordered by the single justice, the lower court shall thereafter be treated as a nominal party which may, but need not, appear and be heard.