

COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

**NO. 2007-P-1390**

ERNEST ORTIZ  
Plaintiff-Appellant, *pro se*

v.

COMMISSIONER,  
MASSACHUSETTS DEPARTMENT OF REVENUE  
(In his official capacity), et al.  
Defendants-Appellees

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**APPELLANT'S MOTION FOR LEAVE TO SUBMIT  
SUPPLEMENTAL APPENDIX IN THE FORM  
INCLUDED WITH THE BRIEF**

Plaintiff moves the Court to file a Supplemental Appendix (S.A.) in the form included with his Reply Brief. The reason for the importance of the S.A. documents is to prove Mr. Ortiz timely served his Motion for New Trial thus tolling the time for a filing of a Notice of Appeal of the Final Judgment.<sup>1</sup> The Appendix documents verify Mr. Ortiz

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<sup>1</sup>March 9, 2007 Final Judgment Order of Dismissal was made  
March 14, 2007 Final Judgment Order of Dismissal was mailed  
March 22, 2007 Motion for New Trial was served  
April 3, 2007 Motion for New Trial was re-served  
May 3, 2007 Order Denying Motion for New Trial was made  
May 29, 2007 Notice of Appeal of the Final Judgment and Motion for Retrial was served and filed

timely served his Motion for Retrial on March 22, 2007--well within the ten day deadline.

1. The Commissioner in his Answer Brief argues Mr. Ortiz did not serve a Motion for New Trial by April 2, 2007 as required by Ma. R. Civ. Proc. Rule 59.
2. The Commissioner argues, a timely filed Motion for New Trial under Rule 59 tolls the time for filing a Notice of Appeal of the Final Judgment, but a post judgment motion served later than ten days after an entered Final Judgment is a Rule 60 motion that does not toll the sixty(60) time for filing a Notice of Appeal of the Final Judgment.
3. The Commissioner argues, because the post judgment motion was filed after April 2 2007 it was a Rule 60 motion; the deadline for filing a Notice of Appeal of the Final Judgment was May 23. (The Notice of Appeal of the Final Judgment and of the Denial of the Motion for a New Trial was filed May 29, 2007.)
4. The Appendix document (S.A. #1 U.S. Postal Return Receipts) is verification that the Motion for New Trial was served to the court and the defendant timely on March 22, 2007--well within the ten day period established by Mass. R Civ. P. Rule 59.
5. The Appendix document (S.A. #1) is verification that the Motion for New Trial being timely filed

tolled the sixty(60) day period for filing a Notice of Appeal of the Final Judgment until the order denying the Motion for New Trial was entered on May 3, 2007. The Notice of Appeal of the Final Judgment and Motion for New trial was filed timely on May 29, 2007.

6. Appendix document S.A. #2 Motion for New Trial is a copy of the Motion for New Trial served on March 22, 2007. The Certificate of Service is further authenticity of the date of service.

WHEREFORE the Appellant, Mr. Ortiz, prays the Court will grant him leave to submit a Supplemental Appendix verifying timely service in the form with his Reply Brief.

January 3, 2008

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**Certificate of Service**

I hereby certify that on this 3rd day of January, 2008, I caused a true and accurate copy of the foregoing Reply to be mailed via U.S. Postal Service, prepaid, to

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Respectfully submitted,

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