

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

(1) NOTICES OF APPEAL MUST BE FILED WITHIN 20 DAYS.

As a general matter, a notice of appeal must be filed within 20 days of “the date of the entry of the judgment, order, or decree appealed from.” R.I. Sup. Ct. R. App. P. 4(a). The notice must be filed with the trial court’s clerk’s office, not the Supreme Court’s clerk’s office. *Id.* The form for filing a notice of appeal may be found in the trial court’s clerk’s office. If there is information that does not fit within the allocated space on the form, it is common practice to attach an addendum to the notice form. See [Miller v. Metropolitan Property and Casualty Ins. Co., No. 2013-63-Appeal](#) at 3 (party attached an exhibit to its notice of appeal identifying additional parties).

(2) PARTIES ALSO MAY APPEAL WITHIN 20 DAYS OF THE FILING OF A NOTICE OF APPEAL ADVERSE TO ITS INTERESTS.

In addition to the initial 20 day period for filing an appeal, Rule 4(a) of the Rhode Island Supreme Court Rules of Appellate Procedure provides in relevant part: “If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within twenty (20) days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.” R.I. Sup. Ct. R. App. P. 4(a).

In [Miller v. Metropolitan Property and Casualty Ins. Co., No. 2013-63-Appeal](#), the Supreme Court held that pursuant to Rule 4(a), when a party files a notice of appeal, any party adverse to that appeal may file a notice of appeal within 20 days of the filing of that notice of

appeal. This is true even if the party seeking to invoke the rule has already filed a notice of appeal in the case. *Id.* at 8-9.

In *Miller*, judgment had entered in favor of the plaintiff, David Miller (“Miller”), and against Defendants Metropolitan Property and Casualty Insurance Co. (“Metropolitan”) and Amica Mutual Insurance Co. (“Amica”) on May 31, 2012. *Id.* at 2-3. Thereafter, Metropolitan and Amica filed renewed motions for judgment as a matter of law and motions for a new trial. *Id.* at 3. The trial justice denied Metropolitan’s motions but granted Amica’s motion for judgment as a matter of law. *Id.* The trial justice also conditionally granted Amica’s motion for a new trial. *Id.* An order reflecting the decision as to Metropolitan’s motions and a separate order reflecting the decision as to Amica’s motions entered on August 20, 2012. *Id.* at 3.

On August 27, 2012, Miller filed a timely notice of appeal, listing Amica as the only defendant and citing the August 20, 2012 order in favor of Amica as the subject of his appeal. *Id.* On August 31, 2012, Metropolitan filed a timely notice of appeal from the May 31, 2012 judgment and the August 20, 2012 order denying its motions. *Id.* Metropolitan identified itself, Amica and a third defendant, Allstate Insurance Company, on its notice of appeal. *Id.* Thereafter, on September 18, 2012, Miller filed a cross-appeal from the May 31, 2012 judgment. *Id.*

Metropolitan moved to dismiss Miller’s cross-appeal as untimely on the basis that it was not filed within the initial 20-day appeal period that began to run after entry of the August 20, 2012 orders. *Id.* However, the trial justice denied Metropolitan’s motion, reasoning that Miller’s cross-appeal was timely because it was filed within 20 days of Metropolitan’s August 31, 2012 notice of appeal. *Id.* at 4. Metropolitan appealed that ruling to the Supreme Court. *Id.*

On appeal, Metropolitan argued that Miller could not invoke Rule 4(a) to file an appeal within 20 days of another party's filing of an appeal because Miller had already filed his own appeal. *Id.* at 5. The Supreme Court disagreed. *Id.* at 6-9.

Instead, the Supreme Court held that Rule 4(a) "should be interpreted to provide a twenty-day appeal period after the first timely notice of appeal from an *adverse party*." *Id.* at 6. According to the Court, Rule 4 was designed to "allow all parties an opportunity to see and respond to the actions of their adversaries." *Id.* at 6 (quoting *Lee v. Coahoma County Mississippi*, 937 F.2d 220, 223 (5th Cir. 1991)).

At the time Miller filed his initial appeal, he did not know that Metropolitan would file an appeal. It was not until Metropolitan filed its appeal on August 31, 2012 that Miller had notice of an appeal from an adverse party. Thus, Miller could invoke Rule 4(a) and file his cross-appeal within 20 days of Metropolitan's notice of appeal. *Id.* at 8-9. Miller's cross-appeal was therefore timely. *Id.* at 9.

(3) A MOTION TO DISMISS AN APPEAL AS UNTIMELY IS FILED IN THE TRIAL COURT.

When a party maintains that a notice of appeal is untimely and the Supreme Court has not yet docketed the appeal, the trial court has jurisdiction to dismiss the appeal for failure to comply with the Supreme Court's Rules of Appellate Procedure. *See* R.I. Sup. Ct. R. App. P. 11. In *Miller*, Metropolitan filed its motion to dismiss Miller's cross-appeal as untimely with the Superior Court. [Miller](#) at 4. When the Superior Court denied Metropolitan's motion to dismiss, Metropolitan filed an appeal to the Supreme Court from that order. *Id.*

(4) A CROSS-APPEAL IS NECESSARY IF A PARTY SEEKS TO OVERTURN A TRIAL COURT’S RULING.

A party that has prevailed in the trial court must file a cross-appeal if he or she intends to ask the Supreme Court to overturn one of the trial court’s rulings. See *Miller* at 8 (citing David A. Wollin, Rhode Island Appellate Procedure § 4:5, 4-11 (West 2004)). However, “[a] cross appeal is not necessary when the [party that has prevailed in the trial court] simply wants to defend the judgment obtained below, even if it was on grounds different from those on which the judgment was based.” *Id.* (quoting Wollin § 4:5, 4-11).

(5) DID YOU KNOW?

The Rhode Island Supreme Court will look to the federal courts for guidance when interpreting a state rule of procedure that is substantially similar to a federal rule of procedure. See *Miller* at 6 (looking to the federal courts for guidance in interpreting Rule 4 of the Rhode Island Supreme Court Rules of Appellate Procedure).

For more updates on Rhode Island appellate law, pointers for practice before the Rhode Island Supreme Court and past editions of the Fast Five on Rhode Island Appellate Practice, please visit my blog site <http://www.RIAppeals.com>.



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