

# FAST FIVE

## RHODE ISLAND APPELLATE PRACTICE

Welcome to the first edition of Fast Five on Rhode Island Appellate Practice, which will provide five periodic updates on Rhode Island appellate law and pointers for practice before the Rhode Island Supreme Court.

### **(1) PREMATURE APPEALS TREATED AS TIMELY**

Under Rule 4 of the Rhode Island Rules of Appellate Procedure, an appeal to the Rhode Island Supreme Court is timely if it is filed within 20 days of the date of the entry of the judgment, order, or decree appealed from. In [The Law Firm of Thomas A. Tarro, III v. Checrallah, No. 2011-123-Appeal \(R.I. Feb. 21, 2013\)](#), the defendant filed her notice of appeal prematurely, before the entry of judgment, however, the Rhode Island Supreme Court treated the appeal as timely. The Supreme Court's treatment of the premature appeal as timely was consistent with the result reached in prior decisions. See *State v. Cipriano*, 21 A.3d 408, 419 n.10 (R.I. 2011); *Otero v. State*, 996 A.2d 667, 670 n.3 (R.I. 2010).

### **(2) DENIALS OF MOTIONS FOR SUMMARY JUDGMENT ARE INTERLOCUTORY AND NOT APPEALABLE AS OF RIGHT**

In [Nationwide Property & Casualty Ins. Co. v. D.F. Pepper Construction, Inc., No. 2011-208-Appeal \(R.I. Jan. 28, 2013\)](#), the defendant appealed from the denial of his motion for summary judgment and from the final judgment. The Rhode Island Supreme Court held that defendant's appeal from the denial of its motion for summary judgment was procedurally defective. The Court noted that “[b]ecause an order denying a motion for summary judgment is

an interlocutory determination and is not entitled to an appeal as of right, we do not generally review such a denial.”” *Id.* at 5 n.3 (quoting *McKinnon v. Rhode Island Hospital Trust Nat’l Bank*, 713 A.2d 245, 247 (R.I. 1998)). In *Nationwide*, the defendant received a full bench trial after the denial of its motion for summary judgment. Thus, on appeal, the Supreme Court reviewed only the decision in that trial.

### **(3) A PICTURE IS WORTH A THOUSAND WORDS**

In two decisions this term, the Rhode Island Supreme Court appended to its decisions illustrations to help explain the basis for its decisions. In [DeMaio v. Ciccone, No. 2011-211-Appeal \(R.I. Feb. 1, 2013\)](#), the Court appended to its decision a photograph of the damage to the motor vehicle that was at issue in that case and in [Rhode Island Mobile Sportfishermen, Inc. v. Nope’s Island Conservation Association, Inc., No. 2011-180-Appeal \(R.I. Jan. 31, 2013\)](#), the Court appended to its decision a map of the peninsula that was at issue in that case. It is a rare occasion for an appellate court to conclude that a photograph or any other pictorial illustration is necessary to properly explain the basis for its decision. The Supreme Court’s recent decisions may signal to practitioners that use of photographs sometimes may be appropriate to illustrate points on appeal.

### **(4) FAILURE TO APPEAR AT ORAL ARGUMENT**

When a pro se litigant failed to appear at oral argument before the Rhode Island Supreme Court and subsequently filed a motion asking the Court to reschedule the argument, the Court denied the motion and decided the case on the memoranda that had been filed with the Court. [Francis v. Gallo, No. 2011-129-Appeal \(R.I. Jan. 22, 2013\)](#).

## (5) DID YOU KNOW?

Did you know cases before the Rhode Island Supreme Court are typically designated either as full (sometimes called plenary) or show cause cases? In full cases, each side is permitted 30 minutes for oral argument and the appellant may reserve 10 minutes for rebuttal. In show cause cases, each side is permitted 10 minutes for oral argument and the appellant may reserve two minutes for rebuttal.



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