

MASSACHUSETTS APPEALS COURT

John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, MA 02108
(617) 725-8106

<http://www.mass.gov/courts/appealscourt/>

CIVIL DOCKETING STATEMENT INSTRUCTIONS

Each appellant or cross-appellant, other than a self-represented litigant who is incarcerated, is required to submit the attached docketing statement within fourteen days of issuance of the notice of entry of the appeal.

All attorneys must electronically file the docketing statement using eFileMA.com in non-impounded cases. Attorneys filing in impounded cases and self-represented parties in all cases are encouraged, but not required, to file the docketing statement using eFileMA.com. Filers may request waiver of the eFileMA.com convenience fee when e-filing a docketing statement by using a waiver account. Docketing statements that are not e-filed must be submitted on paper by mail or hand-delivery to the Appeals Court.

All fields and the certificate of service must be completed. If a request for information is inapplicable to your case, please enter "N/A." If inadequate space is provided for the information requested, please provide the additional information in an attachment. Incomplete docketing statements will not be accepted for filing.

The docketing statement and certificate of service may be signed electronically by the person filing the docketing statement. The proper format for an electronic signature is "/s/" followed by the name of the filer, e.g., "/s/ Jason Jones." Upon agreement between the parties, service of the docketing statement by electronic mail will be deemed in compliance with Mass.R.A.P. 13(c).

To the extent that any request for information on the docketing statement is not clear, please refer to the instructions for each section.

Section 1. Please provide the name or names of each appellant or cross-appellant on whose behalf this docketing statement is submitted.

Section 2. If the docketing statement is being submitted by an attorney, please enter the attorney's name and Board of Bar Overseers registration number. If the docketing statement is being submitted by a self-represented litigant, please check the box on the second line and provide the self-represented litigant's name in the space provided.

Section 3. Please provide the lower court department and division, (e.g. Chelsea District Court) on the line at subsection (a). Please provide the lower court docket number(s) on the line at subsection (b). For subsection (c), please list each judge whose order or judgment is the subject of the appeal and the judge's role in the proceedings. If a judge ruled on a motion, but you are not appealing that ruling, the judge need not be listed. In subsection (d), please provide information concerning any statute or court order deeming the case or any part thereof impounded. For the purposes of this form, the term "impounded" includes any portion of the record that is impounded, sealed, deemed confidential, or excluded from public access by statute, court order, rule, or standing order.

Section 4. From the dropdown menu, please select the case nature that most closely describes the case being appealed.

Section 5. Please provide the requested information pertaining to the perfection of the appeal. In subsection (a), please answer whether the appeal is from a final judgment or whether it is an appeal from an interlocutory order. In subsection (b), if it is an appeal from an interlocutory order, please specify the statute or rule that permits an interlocutory appeal, e.g., G.L. c. 231, s. 118, 1st para. or doctrine of present execution. In subsection (c) please provide the date that the judgment or order from which you are appealing was entered on the docket of the lower court. Please note that this date may be different than the date listed on the order or judgment. In subsection (d), please enter the date that the notice of appeal was filed in the lower court. In subsection (e), if the appeal is from a final judgment, please indicate whether any of the listed post-judgment motions were filed and if so, provide the date of service and not the date filed.

Section 6. Please list the appellate issues that you anticipate raising. If the interpretation of a particular statute or regulation is necessary to resolve the appeal, please provide an appropriate citation to the statute or regulation. Failure to list an appellate issue in the docketing statement will not result in waiver of that issue. This is for informational purposes only and is not an appropriate place for argument.

Section 7. Please identify any related appeals. Appeals may be related because they either involve the same parties or raise the same issue(s). For appeals that involve the same parties, please list all past, present, and anticipated appeals. For appeals that raise the same issue(s), please only list pending or anticipated appeals.

**MASSACHUSETTS APPEALS COURT
CIVIL DOCKETING STATEMENT**

Caption used in the lower court

Appeals Court Docket Number 2018 -P- 1605

Plaintiff(s): Walter Tuvell

v.

Defendant(s): Jack Marshall

1. Party Information

Name of the appellant(s) or cross-appellant(s) on whose behalf this statement is being filed:

Walter Tuvell

2. Attorney Information

Name N/A BBO# N/A

Or, check this box if you are self-represented and provide your name Walter Tuvell

3. Lower Court, Board or Agency Information

a. Court Department Middlesex Superior Court

b. Lower Court Docket Number(s) 1781CV02701

c. Specify the name and the role of each judge whose orders are at issue on appeal [not applicable for appeals directly from a board or agency]:

Judge, first and last name	<u>Christopher Barry-Smith</u>	Role	<u>Entered Judgment</u>
Judge, first and last name	<u>N/A</u>	Role	<u>N/A</u>
Judge, first and last name	<u>N/A</u>	Role	<u>N/A</u>

d. Was the case or any information in the record designated as impounded in the lower court? (see Section 3) Yes No

In addition to providing the information below, parties filing a brief or record appendix that contains impounded materials must comply with Uniform Rule on Impoundment Procedure Rule 12(c), Supreme Judicial Court Rule 1:15 s. 2(c), and M.R.A.P. 16(d), 16(m), 18(a), and 18(g). If this case or any material therein is impounded, specify which documents are impounded and the authority for impoundment, e.g. court order, statute:

<u>N/A</u>

4. Nature of the Case

Select the most appropriate description, or enter description:

Tort (Defamation)**5. Perfection of Appeal**a. Is the appeal from a final judgment, i.e., judgment disposing of all parties and claims? Yes Nob. If no, identify the basis on which the interlocutory order is immediately appealable. **N/A**c. Docketing Date of Judgment or Interlocutory OrderAppealed **Aug. 21, 2018**d. Date Notice of Appeal Filed **Sep. 10, 2018**

Please provide information regarding the following post-judgment motions that may affect the timeliness of the notice of the appeal.

Type of Motion	Check if filed		Date Served (not date filed)
Motion for Judgment (Rule 50(b)) Notwithstanding the Verdict	<input type="radio"/> Yes	<input checked="" type="checkbox"/> No	N/A
Motion to Amend or Make Additional Findings (Rule 52(b))	<input type="radio"/> Yes	<input checked="" type="checkbox"/> No	N/A
Motion to Alter or Amend Judgment (Rule 59)	<input type="radio"/> Yes	<input checked="" type="checkbox"/> No	N/A
Motion for Relief from Judgment (Rule 60)	<input type="radio"/> Yes	<input checked="" type="checkbox"/> No	N/A
Other (specify) <u>N/A</u>	<input type="radio"/> Yes	<input checked="" type="checkbox"/> No	N/A

6. Appellate Issues

In cases other than child welfare appeals, please provide a short statement of the anticipated issues on appeal. If the appellate issue involves the interpretation of a particular statute or regulation, please provide a citation to that statute or regulation. (Note: This statement is for informational purposes only and failure to raise an issue here will not preclude an appellant from raising the issue in its brief.):

In this defamation case, the Defendant (Marshall) published false statements of fact (i.e., he lied). However, the Judge wrongly ruled that Marshall's statements were statements of "opinion" (rather than "fact"), and on that basis dismissed the case under Rule 12(b)(6) ("failure to state a claim"). The problem is that the Judge wrongfully ignored Plaintiff/Tuvell's pleadings in his Complaint, and even ignored rock-solid factual evidence submitted by Tuvell, and instead substituted/conjectured his random own musings. That is not permitted by the Judge at Motion-to-Dismiss time (it's reserved for the jury at trial time). Therefore this Appeal seeks to reverse the dismissal.

7. Related Appeals

Are there any pending, past, or anticipated future appeals or original appellate proceedings that involve these parties or this case which have been entered in the Appeals Court or Supreme Judicial Court? Yes No

Do you know of any pending or anticipated appeals raising related issues? Yes No

If you answered yes to either question, provide the case name and docket number and describe below the related matter or issue:

N/A

Respectfully Submitted,
Walter Tuvell

Signature
/s/ Walter Tuvell

Address

**836 Main St.
Reading, MA 01867**

BBO Number
N/A

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of Dec 4 2018
I have made service of a copy of the Massachusetts Appeals Court Docketing Statement filed on behalf of

Walter Tuvell _____, upon the attorney of record for each party, or if the party
has no attorney then I made service directly to the self-represented party, by hand delivery first class mail e-mail
to the following person(s) and at the following address(es). Note: Service may be made by e-mail only with the consent of
each party or opposing counsel:

Jack Marshall
2707 Westminster Place
Alexandria, VA 22305
jamproethics@verizon.net

/s/ Walter Tuvell

(781)944-3617 (h); (781)475-7254 (c)

Signature

Telephone

836 Main St., Reading, MA 01867

Address