

**Advisory Committee on the Maine Rules of Appellate Procedure  
Draft of the Restyled Maine Rules of Appellate Procedure  
Draft 1-10-17**

**MAINE RULES OF APPELLATE PROCEDURE**

**INTRODUCTORY NOTE: 2017 RESTYLING**

The Maine Rules of Appellate Procedure were originally drafted and approved in 2000, taking effect January 1, 2001. They were approved concurrently with other significant statutory and rules changes impacting court practice, including placement of exclusive jurisdiction over domestic relations matters with the District Court, and adoption of direct appeals from most District Court criminal and civil judgments to the Law Court, eliminating intermediate appeals through the Superior Court.

The combination of these changes required significant adjustment of practices for taking most appeals from the District Court. To make the transition in appellate practice as simple as possible, the Supreme Judicial Court elected to develop the Maine Rules of Appellate Procedure utilizing appeal provisions of the existing Maine Rules of Civil Procedure and Maine Rules of Criminal Procedure. Except for a completely new rule governing development of the appendix, M.R. App. P. 8, the new rules generally tracked provisions that appeared in either the Civil Rules, or the Criminal Rules, or a combination of both.

The rule drafting style of the Civil Rules and Criminal Rules, transitioned into the Maine Rules of Appellate Procedure, was based on drafting practices of the 1950s through the 1970s, when all of the major Maine rules of court practice and ethics practice were developed. That drafting practice included rules that were divided by rule number, subdivisions, and then paragraphs, but with many relatively long paragraphs that included, under a single paragraph heading, sentences addressing several issues without further numbering or separation within the paragraphs. This drafting style had the advantage of aggregating under one heading the rules directions related to that heading. However, the individual rules directions within the paragraphs were more difficult to identify and could be missed by attorneys and members of the public who were not fully familiar with rules practice.

In the past decade, several initiatives, nationally and within the State of Maine, have focused on making court rules more understandable to the bench, the bar, and the general public by modernizing the language of rules that were based on practice and experience from the 1950s through the 1970s. Besides modernizing language, changes included revising large paragraphs to separate each direction within the paragraphs into individually numbered, or at least individually separated, provisions. On some subjects, the American Bar Association developed revised model rules for areas such as attorney ethics and professional conduct, attorney discipline and enforcement, and a model code of judicial conduct. The ABA drafts were utilized, in each instance with adjustments to recognize differences in Maine practice, to develop the Maine Rules of Professional Conduct, adopted in 2009, the revised Maine Bar Rules, adopted in 2015, and the revised Maine Code of Judicial Conduct, also adopted in 2015.

A separate initiative led to the restyling of the Federal Rules of Evidence, effective in 2012. This restyling resulted in division of large paragraphs containing several directions into separate smaller subdivisions focused on one subject or direction in implementing the rules. The Maine Rules of Evidence had been based on the Federal Rules of Evidence. After adoption of the restyled Federal Rules of Evidence, the Advisory Committee on the Maine Rules of Evidence initiated a restyling of the Maine Rules of Evidence, implementing the more modern language and drafting practices that were adopted effective January 1, 2015.

The Maine Supreme Judicial Court initiated review of the Maine Rules of Criminal Procedure, necessitated by statewide implementation of Unified Criminal Dockets. The unification of criminal processes began with rules initiatives in Cumberland County in 2009 and continued progressively through several other counties until statewide adoption of the Maine Rules of Unified Criminal Procedure in 2015.

Following these other rule revisions, the Supreme Judicial Court initiated a restyling of the Maine Rules of Appellate Practice to bring into appellate procedure the more modern language and drafting practices recognized in other recent rule revisions. The draft restyled Maine Rules of Appellate Procedure, developed with the assistance of the Advisory Committee on the Maine Rules of Appellate Procedure, incorporate more modern language and the greater internal paragraph separation and numbering practice utilized in other rules revisions. However, like the restyled Rules of Evidence, this revision generally tracks the numbering system of the existing rules to aid reading and understanding the restyled rules and identifying relevant precedent addressing each rule.

The restyling includes much editing to adopt more modern or more precise terminology. Minor editing to modernize language and make the Rules more precise are not highlighted. However, to assist review of the draft restyled rules, two types of changes are highlighted. **When organizational changes are adopted and internal numbering and separations are achieved, but no substantive change is intended, the revision appears in red in the following rules draft.** **When substantive changes from present practice are proposed, those changes appear in green in the following rules draft.**

Within this restyling, several numbering changes are of note. Rule 2, which addressed several different issues, is separated into three rules: Rule 2A addressing the notice of appeal and filing the appeal; Rule 2B addressing the time for filing an appeal and extension of time for filing an appeal upon timely filing of certain motions; and Rule 2C, applicable to civil cases, addressing cross-appeals, multi-party appeals, and appeal bonds. What was formerly Rule 9 relating to form and content of briefs becomes Rule 7A to immediately follow Rule 7. This puts the two rules that address briefing together within the body of the rules. What were formerly Rule 15, addressing time computation, and Rule 16, addressing definitions, are redesignated as Rules 1A and 1B to appear at the start of the revised rules, as their terms govern the rules that follow.

There are some substantive changes to recognize matters identified as a result of practice implementing the Maine Rules of Appellate Procedure over the past two decades, and to recognize modernization of practice in similar rules such as the Federal Rules of Appellate Procedure as applied in the First Circuit.

The substantive changes within the restyling of the Maine Rules of Appellate Procedure are as follows:

1. The need to identify potential issues on appeal as part of the filing of the notice of appeal from a civil judgment, stated in current Rules 2(a)(2) and 5(b)(2), is eliminated. In practice, this requirement proved not particularly useful, and sometimes counterproductive, particularly when an appeal is prosecuted or defended by a different attorney than handled the matter in the trial court.
2. Rule 2A(e) adds a clarification that documents returned by the trial court clerk as insufficient are not deemed to be filed for purpose of calculating compliance with any time limits. This clarification reflects current practice but had not been stated in the Appellate Rules.

3. Former Rules 2(b)(2) and 2(b)(3), restyled as Rules 2B(b) and 2B(c), are amended to clarify that there is no need to file a notice of appeal from an original judgment while certain post-judgment motions are pending in the trial court. An appeal can instead be taken from the order on that post-judgment motion, within 21 days after its entry, and that single notice of appeal, following ruling on the post-judgment motion, will be treated as an appeal from both the original judgment and the post-judgment order. In the alternative, a notice of appeal can be filed within 21 days after the entry into the docket of the original judgment, and the subsequent timely filing of certain post-judgment motions does not render ineffective the previously filed notice of appeal. The previously filed notice of appeal preserves for review any claim of error in the original judgment and in the order of the post-judgment motion. Former Rule 2(b)(4), relating to preservation of issues in an appeal filed after a ruling on a post-judgment motion is removed, and the content is instead made part of Rules 2B(b) and 2B(c).

4. Rule 2B(d)(3) is added, indicating that parties who are present in court when a particular final judgment or other court action is announced by the court or who, while at the courthouse after the court's announcement, sign a document signifying acknowledgment of the court's action, are presumed to have learned of the entry of judgment at that time. This amendment is added to minimize claims of lack of knowledge of entry of judgments at later times when appeal deadlines may have been missed and parties seek to either reopen or collaterally attack a judgment.

5. Rule 2C(a)(1) clarifies when an appellee must file a cross-appeal to preserve an issue. If a change in the judgment is sought, a cross-appeal must be filed.

6. Rule 3 is amended to clarify that the trial court retains authority to act on certain post-judgment motions, as provided by Rule 3(c), without leave of the Law Court. Rule 3(d) is added to outline the procedure for seeking leave of the Law Court to permit trial court action not otherwise permitted by Rule 3(c).

7. In Rule 3(b)(4), a ruling on a motion to dismiss that does not resolve all pending claims is added to the list of trial court orders from which an appeal may be taken without causing the trial court to cease action on the matter pending resolution of the appeal. The change results in rulings on motions to dismiss being treated the same as rulings on motions for summary judgment that are already addressed in the rule. Adding the reference to motions to dismiss creates no

approval for interlocutory appeals. It only notes that while such interlocutory appeals are pending, trial court consideration of the case can continue.

8. In Rule 5(b)(1)(A), the standard transcript in criminal cases is expanded to include closing arguments in jury trials and hearings on motions to suppress or motions in limine, if a ruling on such motions is an issue on appeal, and sentencing hearings, if sentencing is an issue on appeal.

9. In the discussion of civil transcripts in Rule 5(b)(3), reference is made directly to M.R. Civ. P. 91(f)(2), addressing the circumstances in which, for indigent parties, a recording or statement in lieu of a transcript may be submitted in lieu of a transcript for parties who request such and are qualified for such in the trial court pursuant to M.R. Civ. P. 91(f).

10. Rule 6(a)(1) is revised to introduce a 28-day period in which the trial court clerk will retain the trial court record for most appeals. The purpose of the change, concurrent with amendment to Rule 3(b)-(d) and Rule 6(a)(2), is to hold the record in the trial court to allow for the filing and trial court resolution of timely post-judgment motions listed in Rules 2B(b)(2) and 2B(c)(2).

As part of the change in the time for filing the record in the Law Court, the Rule is also amended to clarify that the record in extradition appeals must be filed within 7 days after filing of the notice of appeal. The amendment to restyled Rule 6(a)(3) also clarifies that the trial court record may be temporarily retained for an additional period of time, by order of the trial court or stipulation of the parties, when such a retention is necessary, for example, to accomplish trial court action permitted by Rule 3(c) of these rules.

11. Rule 6(b)-(d) is subject to significant editing to recognize more modern issues and developments relating to preparing records and the context of records, particularly the treatment of videos and digital evidence and the means by which such videos and digital evidence may be prepared and transmitted to the Law Court. Further, the portion of the rule regarding what may be retained in the trial court is expanded to include other items that, absent court order or apparent need, should be retained with the trial court file rather than transmitted as part of the appeal to the Law Court.

12. Rule 6(d) is added, addressing direct appeals to the Law Court from proceedings in which a record may be prepared only in electronic or digital format, without a printed or paper copy of the record. In such appeals, the record filed

with the Law Court must include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself must include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

13. In the briefing schedule for those appeals not subject to the Track A briefing schedule, Rule 7(b)(2), the two-week time for a reply brief is changed to three weeks in consideration of delays that may be encountered in receiving an appellee's brief.

14. Standards for filing and consideration of a motion to expedite an appeal are added to Rule 7(b)(4). A motion to expedite may be filed in any appeal, rather than just in Track B appeals, as in current Rule 7(b)(2).

15. The allowable length of a brief is reduced from 50 pages to 40 pages for the principal brief of an appellant, an appellee, or an amicus and from 20 pages to 15 pages for any reply brief. Word limits are added as an alternative way to measure length of briefs: 13,000 words for a principal brief, 6,500 words for a reply brief, and 10,000 words for an appellant's reply brief that also addresses an appellee's cross-appeal. The length limits are also placed in one paragraph, Rule 7A(f)(1), rather than being stated separately for each category of briefs filed. As presently, longer briefs may be filed, but only with approval of the Court upon a showing of good cause.

The 40- and 15-page limits compare to limits of 30 pages for principal briefs and 15 pages for reply briefs in Federal Rule of Appellate Procedure 32(a)(7)(A). The Federal Rules of Appellate Procedure, revised effective December 1, 2016, have page size and format limits similar to those in the Maine Rules of Appellate Procedure, including the 14-point font requirement. Fed. R. App. P. 32(a)(4), (5). The Federal Rules of Appellate Procedure do offer another two alternatives for counting length of a brief, either a word limit (13,000 words) or a line limit (1300 lines). Fed. R. App. P. 32(a)(7)(B). A reply brief has a word limit of one half of the principal brief. *Id.*

16. Rule 7A(a)(6) is proposed to allow the filing of an addendum with the appellant's and the appellee's principal briefs. The addendum, subject to a 50-page limit, must include only copies of items from the trial court record and can include items formerly indicated as discretionary items in the appendix (Rule 8). Rule 7A(a)(6) requires that copies of exhibits, including photographs, that were presented in color to the trial court or administrative agency shall be reproduced in

color by any means, such as scanning and color printing, that reproduces the exhibit in as close as possible to the way the exhibit appears in the trial court record, but generally within the page size limits of the brief.

17. Rule 7A(i)(2) is amended to require the filing of one electronic copy of each brief, rather than being optional as in the present Rule. The Court may want to examine whether the current email filing practice should be replaced by a required filing by CD or other similar device. *See* First Circuit Local Rule 32.0(a) (requiring, when a party is represented by counsel, the filing of one copy of a brief over 10 pages in length on a “computer readable disk”).

18. Rule 7A(j) is adopted to recognize current practice allowing a party to an appeal to submit a letter indicating supplemental or newly discovered authorities to support an appeal up to the time of oral argument or on briefs consideration. This amendment, and its 350-word limit, is similar to Fed. R. App. P. 28(j), though the Federal Rule allows submission of post-argument briefs by permitting such letters anytime “before decision.” The draft would allow post-argument filings only on the invitation of the Court.

19. Concurrently with the change to Rule 7A(a)(6) authorizing an addendum to the parties’ principal briefs, Rule 8 is proposed to be amended to list items from the trial court record that must be included in the appendix, and to limit the content of the appendix to the specified mandatory items.

20. The list of materials that may not be included in the appendix or in an addendum, stated in Rule 8(c)(2), is expanded to include any documents that are, or include, pictures, videos, or other images (i) of minor children, (ii) of adults subject to a guardianship or mental health commitment proceeding, or (iii) that depict nudity or sexual or sexualized acts; and, for cases other than child protective proceedings, any documents made confidential by statute or court order and not required to be included in the appendix by subdivisions (g) or (h).

21. The mandatory items that must be included in the appendix are expanded to include pre- or post-judgment motions that are at issue on appeal, wills, deeds, leases, trusts, or insurance policies that are at issue on appeal, guardian ad litem reports, if any, when parental rights are at issue on appeal, and several items related to criminal appeals.

22. Rule 10(a)(2) is adopted to require that a copy of any motion filed by an attorney representing a party in an appeal that seeks an extension of time or a delay

of more than 7 days, or that seeks a continuance of any scheduled hearing, oral argument or other court proceeding must be sent to the party represented by that attorney.

23. As with briefs, the amended Rule 10(d) requires that the text of motions, other than footnotes or quotations, must be in 14-point font. *See* Fed. R. App. P. 27(d)(1) (cross-referencing to the page formatting requirements for briefs).

24. Rule 13(b)(1) is amended to limit recoverable costs for briefs to 70 pages for a principal brief and 20 pages for a reply brief. The current Rule 13(b) limits recoverable costs for briefs to a total of 75 pages. The 70-page limit for recovery of costs covers the brief and any addendum.

25. Rule 14(a)(2) is amended to specify that, as with criminal appeals, addressed in Rule 14(a)(1), the mandate of the Law Court in a civil appeal involving a child protective matter, a parental rights matter, a guardianship, a contempt, or a temporary or permanent injunction shall issue the day of or the day after decision. Concurrently with this change, the process to stay the mandate or otherwise seek further review after certification is clarified.



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STATE OF MAINE  
SUPREME JUDICIAL COURT

MAINE RULES OF APPELLATE PROCEDURE

I. GENERAL APPEAL PROCEEDINGS

RULE 1. SCOPE OF RULES

These Rules govern the procedure for review of any judgment, order, or ruling by a Unified Criminal Docket, the District Court, ~~or~~ the Superior Court, the Business and Consumer Docket, ~~or~~ the Probate Courts, ~~or~~ a single justice of the Supreme Judicial Court, or a question certified by the federal courts, which is by law reviewable by the Law Court. They shall be construed to secure the just, speedy, and inexpensive determination of every appeal.

~~These rules~~ The restyled Maine Rules of Appellate Procedure shall apply to all appeals in which the notice of appeal is filed on or after ~~January~~ July 1, ~~2001~~ 2017.

**RESTYLING NOTE: January 2017**

Rule 1 is changed to add references to Unified Criminal Dockets, the Business and Consumer Docket, and questions certified by the federal courts and to indicate a July 1, 2017, effective date for the restyled rules.

**RULE ~~151A~~. TIME COMPUTATION**

~~Rule 6(a) of the Maine Rules of Civil Procedure shall govern the computation of any period of time prescribed or allowed by these rules.~~

In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

When the period of time prescribed or allowed is 6 days or fewer, intermediate Saturdays, Sundays, legal holidays, and days when, by order of the

Chief Justice of the Superior Court or Chief Judge of the District Court pursuant to M.R. Civ. P. 77(c) the clerk's office is closed, shall be excluded in the computation. When the office of the Clerk of the Supreme Judicial Court is closed before 4:00 p.m. on any regular business day, a required filing shall be timely if filed on the next regular business day that the office is open for business.

### **RETYLING NOTE: January 2017**

Rule 1A replaces the former Rule 15 relating to time computation. Along with the former Rule 16 definitions, moved to become Rule 1B, it is moved to an earlier point in the rules because its terms apply to many subsequent rules.

Rather than cross-reference to Rule 6(a) of the Maine Rules of Civil Procedure as it replaced Rule 15, the terms of Civil Rule 6(a) are copied into Rule 1A to remove the need for a cross-reference. There are adjustments to recognize the Rule's placement in the Appellate Rules structure. For example, the term "less than seven days" in M.R. Civ. P. 6(a) is replaced with the term "six days or fewer" in Rule 1A to reduce the potential confusion as to the counting rules that may apply to a time period of seven days. Seven-day or one-week increments are the most common basis for time calculations in the Maine Rules of Appellate Procedure. In addition, court-ordered closures on regular business days are directly addressed in the Rule. Also, the effect of a closure of the Law Court Clerk's Office before 4:00 p.m. on a regular business day is specifically addressed.

### **RULE ~~16~~1B. DEFINITIONS**

Unless specified to the contrary by statute or these Rules, the following words, whenever used in these Rules shall have the following meanings:

1. The term "appellant's attorney" or "appellee's attorney" or any like term shall include the party appearing without counsel, and the word "appellant" or "appellee" or any like term shall include the party appearing with counsel.

2. The word "court" or "trial court" shall include any Unified Criminal Docket, the Business and Consumer Docket, any judge of the Probate Court, any judge of the District Court, any justice of the Superior Court, any single justice of the Supreme Judicial Court, and any administrative agency from which an appeal lies directly to the Law Court.

3. The term “plaintiff’s attorney” or “defendant’s attorney” or any like term shall include the party appearing without counsel, and the word “plaintiff” or “defendant” or any like term shall include the party appearing with counsel.

4. The word “reporter” means a court reporter, the Office of Transcript Production, or a transcriber of an electronically recorded record.

### **RETYLING NOTE: January 2017**

Rule 1B is the former Rule 16 relating to time computations. The principal changes from Rule 16 add reference to a Unified Criminal Docket and the Business and Consumer Docket in addressing the definition of “trial court” and add a reference to the Office of Transcript Production in the definition of the word “reporter.”

### **RULE 2A. NOTICE AND FILING OF APPEAL**

(a) Commencing Appeal. Review of any criminal or civil judgment, order or ruling of the District Court, the Superior Court, any Unified Criminal Docket, or the Probate Courts, or a single justice of the Supreme Judicial Court that is by law reviewable by the Law Court shall be by appeal.

**(b) Notice.** The appeal shall be commenced by filing a notice of appeal with the clerk of the trial court from which the appeal is taken. The notice of appeal shall be signed by the appellant or the appellant’s attorney. The notice of appeal shall specify the party taking the appeal and shall designate the judgment or part thereof appealed from. A copy of the notice of appeal shall be served on the other parties.

**(c) Filing Fee.**

**(1)** No filing fee is required for appeals in criminal cases. The required filing fee for appeals in civil cases shall be paid to the clerk of the trial court at the time of the filing of the notice of appeal.

**(2)** A person who believes that he or she cannot afford to pay the filing fee may file a request to have the fee waived pursuant to M.R. Civ. P. 91. If the request to have the filing fee waived is denied, the party who sought the waiver shall pay the filing fee in full within 7 days after the entry of the order denying the

request for waiver of the filing fee, or the appeal shall be dismissed by the trial court.

**(d) Transcript Order.** The appellant shall file with the notice of appeal an order for those portions of the transcript the appellant intends to include in the record on appeal. The transcript order shall be signed by the appellant or the appellant's attorney. A copy of the transcript order form shall be served on the other parties.

**(e) Insufficient Filing.** If a notice of appeal or transcript order is not signed, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the trial court clerk shall docket the receipt and return of the non-accepted documents, and then return all documents to the party who filed them. Documents that are returned to the party who filed them shall not be deemed as filed for purpose of calculating compliance with time limits.

**(f) Criminal Appeals: Particular Requirements.**

**(1)** In a criminal case, when a court imposes any sentence on a defendant (i) after trial, or (ii) after a plea to murder or a Class A, B, or C crime, with a sentence of one year or more that is not agreed to pursuant to M.R.U. Crim. P. 11A, the defendant shall be advised by the trial court of the right to appeal. If a criminal defendant not represented by counsel requests, the trial court shall cause a notice of appeal to be prepared and filed on behalf of the defendant forthwith.

**(2)** A notice of appeal filed by the State in a criminal case shall be accompanied by a written approval of the appeal signed by the Attorney General, pursuant to Rule 21(b), or a representation that the Attorney General has approved the appeal and a written approval will be filed within 7 days. The State shall serve a copy of the written approval on the other parties, in addition to the notice of appeal and transcript order form as required by Rules 2A(b) and (d). The clerk of the trial court shall file the approval, note the filing in the criminal docket, and mail a date-stamped copy of the approval to the defendant or, if the defendant is represented by counsel, to the attorney for the defendant.

**(g) Trial Court Clerk Actions.**

**(1)** The trial court clerk shall mail a date-stamped copy of the notice of appeal and transcript order form to (i) the Clerk of the Law Court; (ii) the court reporter or Office of Transcript Production; and (iii) the attorney of record of each

party other than the appellant, or, if a party is not represented by an attorney, then to the last known address of that party. This notification is sufficient notwithstanding the death or incapacity of the party or of the party's attorney prior to or subsequent to the mailing of the notification.

(2) The clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing.

(3) The trial court clerk's failure to mail the notice of appeal as indicated in Rule 2A(g)(1) does not affect the validity of the appeal, but no appeal shall be deemed to be filed and commenced in the Law Court pursuant to Rule 3(a) until the Clerk of the Law Court receives the copy of the notice of appeal from the trial court clerk.

(4) In any action under the Maine Tort Claims Act, 14 M.R.S. §§ 8101 *et seq.*, whether the action involves the State or a local government, the trial court clerk shall mail a copy of any notice of appeal that is filed to the Attorney General at the same time as the trial court clerk mails that notice to the parties to the action.

#### **RESTYLING NOTE: January 2017**

The revision of Rule 2 applies restyling practice to add significant separations and internal numbering to what were long paragraphs in the original Rule. The original rule has also been divided into three distinct Rules. Rule 2A addresses the notice and filing of the appeal. Rule 2B addresses the time for taking an appeal. Rule 2C addresses cross-appeals, multiple appeals, and bonds in civil cases.

Rule 2A is reorganized to address first the commencement of the appeal, then the notice of the appeal, then the filing fee and transcript order. The Rule also clarifies the trial court clerks' actions when filings are insufficient and, in Rule 2A(c), specifies what may happen when a waiver of the filing fees is requested but is denied, indicating that when there is a denial, the filing fee must be paid within seven days after the denial or the appeal would be dismissed by the trial court clerk. The seven day payment or dismissal requirement is drawn from M.R. Civ. P. 91(d) which applies in all circumstances when a fee waiver is denied.

The requirement of former Rule 2(a)(2) that notices of appeal in civil actions include a statement of the issues is removed.

Rules 2A(b), (d), and (f)(2) add the requirement that the appellant must serve on the other parties the notice of appeal, transcript order form, and, when applicable, written approval of the Attorney General or a representation that the Attorney General's approval has been obtained and will be filed within 7 days.

Rule 2A(e) clarifies that the documents returned by the trial court clerk as insufficient are not deemed as filed for purpose of calculating compliance with any time limits.

Rule 2A(f) includes, with slight modification, what were formerly paragraphs 3 and 4 in Rule 2(a).

Rule 2A(g) is a restyling of what is currently Rule 2(a), paragraph 5 with the addition of several separations and internal numbering.

## **RULE 2B. TIME FOR APPEAL**

**(a) Time of Entry of Judgment.** A judgment or order is entered within the meaning of this Rule when it is entered into the docket. A notice of appeal filed after a verdict or an order, finding, or judgment of the court, but before entry in the docket shall be treated as filed on the date of entry into the docket.

### **(b) Criminal Cases.**

**(1) Time to File.** Except for extradition appeals addressed in Rule 2B(b)(3), the time within which an appeal may be taken in a criminal case shall be 21 days after entry into the docket of the judgment or order appealed from, unless a shorter time is provided by law.

**(2) Time to File Extended by Timely Filing of Certain Motions.** If a timely motion for:

- (i) arrest of judgment under M.R.U. Crim. P. 34; or
- (ii) judgment of acquittal after verdict under M.R.U. Crim. P. 29; or
- (iii) a new trial under M.R.U. Crim. P. 33; or
- (iv) correction or reduction of sentence under M.R.U. Crim. P. 35(a) or 35(c)



is filed within 21 days after entry of judgment, a notice of appeal from the original judgment need not be filed within 21 days after the entry into the docket of that judgment. Instead, one appeal of the original judgment and the order on the motion may be taken within 21 days after entry into the docket of the order granting, denying, or dismissing the motion. An appeal designated as being taken from such an order shall be treated as an appeal from both the order and the original judgment. In the alternative, if a notice of appeal from the original judgment is filed within 21 days after the entry into the docket of that judgment, the subsequent timely filing of one of the post-judgment motions listed in subsections (i)-(iv) above does not waive or otherwise render ineffective the previously filed notice of appeal. The timely filed notice of appeal from the original judgment preserves for review any claim of error in the record, including any claim of error in an order on the post-judgment motions listed in subsections (i)-(iv). This paragraph does not apply to any post-judgment motion that is not listed in subsections (i)-(iv) above.

**(3) Extradition Appeals.** The time within which an appeal may be taken from an order making a final disposition of a petition contesting extradition shall be 7 days after entry into the docket of the order appealed from.

**(c) Civil Cases.**

**(1) Time to File.** The time within which an appeal may be taken in a civil case shall be 21 days after entry into the docket of the judgment or order appealed from, unless a shorter time is provided by law.

**(2) Time to File Extended by Timely Filing of Certain Motions.** If a timely motion:

- (i) for judgment under M.R. Civ. P. 50(b); or
- (ii) to make or amend findings of fact or conclusions of law under M.R. Civ. P. 52(a) or (b); or
- (iii) for a new trial under M.R. Civ. P. 59; or
- (iv) to alter or amend the judgment, including a motion for reconsideration of the judgment under M.R. Civ. P. 59; or
- (v) for reopening or reconsideration before the Public Utilities Commission pursuant to its rules of practice

is filed within the time allowed by statute or rule after entry of judgment, a notice of appeal from the original judgment need not be filed within 21 days after the

entry into the docket of that judgment. Instead, one appeal of the original judgment and the order on the motion may be taken within 21 days after entry into the docket of the order granting, denying, or dismissing the motion. An appeal designated as being taken from such an order shall be treated as an appeal from both the order and the original judgment. In the alternative, if a notice of appeal from the original judgment is filed within 21 days after the entry into the docket of that judgment, the subsequent timely filing of one of the post-judgment motions listed in subsections (i)-(v) above does not waive or otherwise render ineffective the previously filed notice of appeal. The timely filed notice of appeal from the original judgment preserves for review any claim of error in the record, including any claim of error in an order on the post-judgment motions listed in subsections (i)-(v). This paragraph does not apply to any post-judgment motion that is not listed in subsections (i)-(v) above.

**(d) Extension of Time.** Except when prohibited by statute:

**(1) Twenty-One Days.** Upon a showing of good cause, the trial court may, before or after the time has expired, with or without motion and notice, extend the time for filing the notice of appeal otherwise allowed for a period not to exceed 21 days from the expiration of the original time for filing an appeal prescribed by Rule 2B.

**(2) One Hundred Forty Days.** An extension of the time to file the notice of appeal exceeding 21 days, but not exceeding 140 days, from the expiration of the original time for filing an appeal prescribed by Rule 2B may be granted by the trial court on a motion with notice only upon a showing that (i) the trial court clerk, although required to do so, failed to send notice of the entry of judgment to the moving party; and (ii) the moving party did not otherwise learn of the entry of judgment; and (iii) any other party will not be unfairly prejudiced by the extension of time to file the notice of appeal.

**(3) Knowledge of Judgment Presumed.** A party shall be presumed to have learned of the entry of a judgment if that party, or an attorney representing that party, was present in open court when a judgment, ruling on a motion, or sentence was announced, or if that party, at the courthouse, signed a document, such as a sentencing document, a disclosure order, or other document acknowledging the entry of final judgment in the proceeding.

## **RETYLING NOTE: January 2017**

Rule 2B (Former Rule 2(b)) relating to calculation of the time to file an appeal has been subject to significant editing and addition of many separations and internal numbering, with some editing for clarification. Of particular note, the motions which can cause the time to file an appeal to be extended in criminal or civil appeals are each separated out for easy identification.

Former Rules 2(b)(2) and 2(b)(3), restyled as Rules 2B(b) and 2B(c), are amended to clarify that there is no need to file a notice of appeal from an original judgment while certain post-judgment motions are pending in the trial court. A notice of appeal can instead be taken from the order on that post-judgment motion, within 21 days after its entry, and that single notice of appeal will be treated as an appeal from both the original judgment and the post-judgment order. In the alternative, a notice of appeal can be filed within 21 days after the entry into the docket of the original judgment, and the subsequent timely filing of certain post-judgment motions does not render ineffective the previously filed notice of appeal. The previously filed notice of appeal preserves for review any claim of error in the original judgment and in the order of the post-judgment motion.

The provision in former Rule 2(b)(3) regarding cross-appeals is moved to Rule 2C.

Former Rule 2(b)(4) is removed, and the content is instead made part of Rules 2B(b) and 2B(c).

To address an issue that arises from time to time, Rule 2B(d)(3) is added, indicating that a party who is present in court when a particular final judgment or other court action is announced by the court or who, while at the courthouse after the court's announcement, signs a document signifying acknowledgment of the court's action, is presumed to have learned of the entry the judgment at that time. This amendment is added to minimize claims of lack of knowledge of entry of judgments at later times when appeal deadlines may have been missed and parties seek to either reopen or collaterally attack a judgment.

## **RULE 2C. MULTIPLE APPEALS AND BONDS IN CIVIL CASES**

### **(a) Cross-Appeals.**

**(1) Need to file.** An appellee may, without filing a cross-appeal, argue that alternative grounds support the judgment that is on appeal. If the appellee seeks any change in the judgment that is on appeal, the appellee must file a cross-appeal to preserve that issue.

**(2) Time to File.** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal (accompanied, when required, by the filing fee or a request to have the fee waived pursuant to M.R. Civ. P. 91) within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires.

**(3) Status of Parties.** When more than one party has appealed, the party who first appeals shall, unless otherwise agreed by the parties or ordered by the Law Court, be treated as the appellant in applying these Rules to such cross-appeals, and all other parties shall be treated as appellees.

**(b) Joint or Consolidated Appeals.** If two or more parties are entitled to appeal from a civil judgment or order, and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated after docketing in the Law Court by order of the Law Court upon its own motion or upon motion of a party.

**(c) Parents' Appeals.** If both parents appeal from an order of the District Court or the Probate Court finding jeopardy to a child as to both parents, terminating both parents' parental rights to a child, awarding a guardianship over a child to a third person, or awarding a grandparent visitation rights, both parents shall be treated as appellants, unless otherwise agreed by the parties or ordered by the Law Court.

**(d) Bond; Continuance in Effect.** Any bond given at the commencement or during the pendency of a civil action, unless otherwise provided by law or by direction of the court ordering the judgment appealed from, shall continue in effect until the final disposition of any appeal of the action and until the conditions of such bond have been fulfilled.

## RETYLING NOTE: January 2017

Rule 2C replaces Rule 2(c). Rule 2C(a) is added to address cross-appeals. Rule 2C(a)(1) clarifies when an appellee must file a cross-appeal to preserve an issue. Historically, the Law Court has not required an appellee to file a cross-appeal to preserve an argument that the judgment should be affirmed in every respect but simply contends that the same result could have been reached on alternative grounds. *See Harris v. Woodlands Club*, 2012 ME 117, ¶ 16 n.8, 55 A.3d 449; *Scott Dugas Trucking & Excavating, Inc. v. Homeplace Bldg. & Remodeling, Inc.*, 651 A.2d 327, 329 (Me. 1994); *State v. Me. Cent. R.R.*, 517 A.2d 55, 57 (Me. 1986); *Givertz v. Me. Med. Ctr.*, 459 A.2d 548, 556 (Me. 1983). *But see MaineToday Media v. State*, 2013 ME 100, ¶ 28 n.17, 82 A.3d 104; *Langevin v. Allstate Ins. Co.*, 2013 ME 55, ¶ 6 n.4, 66 A.3d 585; *Millien v. Colby College*, 2005 ME 66, ¶ 9 n.3, 874 A.2d 397; *Littlefield v. Littlefield*, 292 A.2d 204, 208-09 (Me. 1972). If a change in the judgment is sought, a cross-appeal must be filed. *See Lyle v. Mangar*, 2011 ME 129, ¶ 22, 36 A.3d 867; *Costa v. Vogel*, 2001 ME 131, ¶ 1 n.1, 777 A.2d 827.

Rule 2C has minor editing to further clarify that the Rule only applies to civil judgments.

### **RULE 3. DOCKETING THE APPEAL AND FURTHER TRIAL COURT ACTION**

#### **(a) Docketing the Appeal.**

**(1) Trial Court Docketing.** Upon receipt of the signed notice of appeal and, when required, the requisite fee or waiver, the trial court clerk shall mark the case “Law” on the docket. The trial court clerk shall then transmit a copy of the notice of appeal together with a copy of all docket entries to the Clerk of the Law Court.

**(2) Law Court Docketing.** Upon receipt of the copies of the notice of appeal and the docket entries, the Clerk of the Law Court shall forthwith docket the appeal and send each party of record a written notice of the docketing, the Law Court docket number, and the date within which the record on appeal and the reporter’s transcript must be filed.

**(b) Further Trial Court Action Limited.** The trial court shall take no further action pending disposition of the appeal by the Law Court except as provided in Rules 3(c) and (d) of these Rules.

**(c) Trial Court Action Without Leave of the Law Court.** The trial court is permitted, during the pendency of the appeal and without leave of the Law Court, to take the following action:

**(1) Criminal Cases.** In criminal cases, to dispose of any post-judgment motion filed within 21 days after entry of judgment pursuant to one of the rules enumerated in Rule 2B(b)(2); to appoint counsel for an indigent defendant; to grant a stay of execution and set or revoke bail pending appeal; and to conduct proceedings either for a new trial or for the correction or reduction of a sentence under M.R.U. Crim. P. 35(a) or (c);

**(2) Civil Cases.** In civil cases, to dispose of any post-judgment motion filed pursuant to one of the rules enumerated in Rule 2B(c)(2) of these Rules; as provided in M.R. Civ. P. 27(b), 54(b)(3), 60(a), 62(a), 62(c), and 62(d); and as provided in Rule 5(e) of these Rules;

**(3) Child Protection Cases.** In child protection cases, to continue case review and processing as required by law; and

**(4) Certain Interlocutory Appeals.** The trial court is permitted to act on a case pending resolution of any appeal of an order approving, dissolving or denying an attachment or trustee process, a discovery order, a temporary restraining order or preliminary injunction; or an order granting or denying a motion for summary judgment or a motion to dismiss that does not resolve all pending claims.

Any party moving for trial court action permitted by this Rule may include, in its motion to the trial court, a request that the clerk of the trial court temporarily retain some or all of the trial court record as provided by Rule 6(a)(3) of these Rules, or retrieve the same from the Clerk of the Law Court, if necessary for the requested trial court action.

**(d) Trial Court Action With Leave of the Law Court.** A party may, during the pendency of an appeal, file a motion in the Law Court to permit a specific trial court action that is not already permitted by Rule 3(c) of these Rules. The moving party shall include, in its motion to the Law Court, the reason for the

request for trial court action and shall attach to the Law Court motion the proposed trial court motion.

### **RETYLING NOTE: January 2017**

Rule 3 is amended to add significant clarification and separations. This revision clarifies that the trial court retains authority to act as provided by Rule 3(c) without leave of the Law Court. Rule 3(d) is added to outline the procedure for seeking leave of the Law Court to permit trial court action not otherwise permitted by Rule 3(c).

In Rule 3(b)(4), a ruling on a motion to dismiss that does not resolve all pending claims is added to the list of trial court orders from which an appeal may be taken without causing the trial court to cease action on the matter pending resolution of the appeal. The change results in rulings on motions to dismiss being treated the same as rulings on motions for summary judgment that are already addressed in the Rule. Adding the reference to motions to dismiss creates no approval for interlocutory appeals. It only notes that while such interlocutory appeals are pending, trial court consideration of the case can continue.

### **RULE 4. DISMISSAL OF THE APPEAL**

#### **(a) Voluntary Dismissal.**

**(1) Criminal Appeals.** Prior to the time stated in subdivision (b) of this Rule, a criminal defendant may dismiss his or her appeal by filing with the Clerk of the Law Court a written dismissal, personally signed by the defendant, and the State may dismiss its appeal by filing a written dismissal signed by the attorney for the State.

**(2) Civil Appeals.** On or before the date that the appellant's brief is filed or is due to be filed, whichever is earlier, an appellant or cross-appellant in a civil appeal may dismiss the appeal by filing with the Clerk of the Law Court a written dismissal signed by the appellant or the appellant's attorney. After the date on which the appellant's brief is filed or is due to be filed, an appeal may be dismissed only by stipulation pursuant to paragraph (a)(3) of this Rule.

**(3) By Stipulation.** Prior to the time stated in subdivision (b) of this Rule, a civil appeal may be dismissed by stipulation entered into by all of the parties and filed with the Clerk of the Law Court.

**(b) On or After Date for Consideration.** On or after the date scheduled for oral argument or **submission 42 days (6 weeks) after the date of the notice, pursuant to Rule 11(g)(1), that an appeal has been scheduled for conference** on briefs, an appeal may be dismissed voluntarily or by stipulation only with leave of the Law Court.

**(c) For Failure to Perfect Appeal.** If an appellant fails to comply with the provisions of these Rules within the times prescribed herein, the Law Court may, on motion of any other party or on its own initiative, dismiss the appeal for want of prosecution.

**(d) For Lack of Jurisdiction.** Whenever it appears by suggestion of the parties or otherwise that the Law Court lacks jurisdiction of the subject matter, the Law Court shall dismiss the appeal.

#### **RETYLING NOTE: January 2017**

Rule 4, which already had significant separations and internal numbering has minor editing to clarify in Rule 4(a) that a criminal defendant must personally sign a voluntary dismissal, a direction that was implicit in the current rule. Rule 4(b) is amended to clarify the date after which an appeal scheduled for on briefs consideration may be dismissed voluntarily only with approval of the Law Court. That date is 42 days (6 weeks) after the date of the notice from the Clerk of the Law Court, pursuant to Rule 11(g)(1) that the appeal will be considered on the briefs without oral argument. The current Rule referencing only the date for “submission” on briefs as the deadline was ineffective, because the specific date for conference of an appeal on briefs is not noticed and sometimes changes.

#### **RULE 5. RECORD ON APPEAL**

**(a) Contents of Record.** The record on appeal shall consist of the trial court clerk’s record and exhibits filed in the trial court, the reporter’s transcript of the proceedings, if any, and a copy of the docket entries.

**(b) Transcripts.**

**(1) Criminal Cases.**



**(A) Order of Transcript.** Except as otherwise designated, the standard transcript ~~on~~in a criminal appeal shall include the testimony of the witnesses at trial; any bench conferences; and, in a jury trial, the closing arguments and the court's charge to the jury. The standard transcript shall also include any hearing on a motion to suppress or a motion in limine, if a ruling on such a motion is at issue on appeal, and the sentencing hearing, if sentencing is at issue on appeal.

Appellant's counsel may add portions to, ~~or delete portions from,~~ this standard transcript by utilizing the requisite Judicial Branch form. Appellant's counsel shall delete from the standard transcript any portion not necessary for purposes of the appeal.

Within seven days after receipt of appellant's transcript order, appellee's counsel may order additional portions of the transcript by utilizing the requisite Judicial Branch form.

\_\_\_\_\_ A copy of any transcript order not filed as part of, or contemporaneously with, the notice of appeal shall be filed with the Clerk of the Law Court and served on each other party, or if a party is represented, counsel for a represented party.

**(B) Payment for Transcript.** A non-indigent appellant shall make satisfactory financial arrangements with the court reporter or Office of Transcript Production within 714 days after filing the notice of appeal, or the transcript order shall be cancelled, in which case the appeal shall proceed without a transcript.

In the case of an indigent appellant, the cost of the transcript shall be paid for by the Maine Commission on Indigent Legal Services. An indigent appellant is an appellant who has been determined indigent: (1) by the trial court before verdict pursuant to M.R.U. Crim. P. 44(b); (2) by the trial court after verdict pursuant to M.R.U. Crim. P. 44A(b); or (3) by a Justice of the Supreme Judicial Court pursuant to M.R.U. Crim. P. 44A(c).

## **(2) Civil Cases.**

**(A) Order of Transcript.** An appellant shall order the transcript or portions of the transcript deemed necessary for appeal by filing the transcript order form with the notice of appeal.

\_\_\_\_\_ If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall

include in the record a transcript of all evidence relevant to such finding or conclusion.

~~With the notice of appeal and transcript order form, the appellant shall file a statement of the issues the appellant intends to present on the appeal and shall serve on the other parties a copy of the order form and of the statement. The statement of issues is for initial guidance of the parties in developing the record and transcript orders but does not preclude raising other properly preserved issues on appeal.~~

If any appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 7 days after the service of the ~~order or certificate and the statement~~appellant's transcript order form of the appellant, file with the Clerk of the Law Court and serve on the appellant a designation of additional parts of the transcript to be included. Unless within 7 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 7 days either order the parts or move in the Law Court for an order requiring the appellant to do so.

**(B) Payment for Transcript.**

**(1)** Within 7~~14~~ days after filing the notice of appeal and transcript order form, a party must make satisfactory arrangements with the reporter or other person from whom the transcript is ordered for payment of the cost of the transcript. In every instance in which a reporter or the Office of Transcript Production requests a deposit prior to beginning production of a transcript, that deposit shall be paid within 7 days after the date on which the attorney, litigant, or other interested person was notified of the amount of the deposit. In the event that the deposit has not been paid within the required time, the reporter or the Office of Transcript Production shall consider the order canceled and shall so inform the Clerk of the Law Court, the party ordering the transcript, and the court in which the transcript was to be filed. The appeal or other matter shall then proceed without the transcript.

**(2)** In the case of an indigent parent who is an appellant in a child protection case brought by the State, the cost of the transcript shall be paid for by the Maine Commission on Indigent Legal Services. An indigent parent-appellant is one who has been determined indigent: (1) by the trial court before entry of the judgment or order appealed from or; (2) by the trial court after entry of the judgment or order appealed from; or (3) by a Justice of the Supreme Judicial Court.

(3) An electronic recording or statement of the evidence in lieu of a transcript may be filed to support an appeal only when the proceeding was recorded by the court or by an official court reporter, but, pursuant to Rule 91(f)(2) of the Maine Rules of Civil Procedure, the trial court (i) has determined that the appellant is indigent and (ii) has approved the use an electronic recording or statement of the evidence in lieu of a transcript.

**(c) Condensed Transcript.** The party initially ordering the transcript or a part thereof in a criminal or a civil case may order a transcript in any format allowed by the Administrative Order governing preparation of transcripts. Transcripts filed as part of the record on appeal shall consist of transcripts using condensed pages reproduced in accordance with M.R. Civ. P. 5(i)(2).

**(d) Unavailable Transcript.**

(1) In the event a hearing or trial was not recorded or a transcript of the evidence or proceedings at a hearing or trial cannot be prepared for reasons not attributable to the appellant, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection, for use instead of a reporter's transcript.

(2) The appellant's This statement shall be filed with the trial court and served on the appellee within 21 days after entry of judgment, or 14 days after the filing of the notice of appeal, whichever occurs first. The appellee may file and serve objections or propose amendments thereto within 7 days after service.

(3) After the filing of any statement of the evidence or proceedings and any objections, Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

**(e) Correction or Modification of Record.** If any difference arises as to whether the record on appeal truly discloses what occurred in the trial court, or if anything material to either party is omitted from the record on appeal, the trial court may on motion or suggestion, after appropriate notice to the parties, supplement the record to correct the omission or misstatement, or the Law Court may on motion or suggestion direct that a supplemental record be transmitted by the trial court clerk. All other questions as to the content and form of the record shall be presented to the Law Court.

**(f) Record on Agreed Statement.** When the questions presented by an appeal to the Law Court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Law Court.

The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth and is sufficiently complete, the trial court shall approve it for certification to the Law Court as the record on appeal.

#### **RESTYLING NOTE: January 2017**

The restyling of Rule 5 reflects significant editing and internal numbering particularly with regard to reference to the transcript in civil cases. Of particular note, a reference to transcripts for appeals by indigent parents in Title 22 child protection cases is added to track the provision relating to transcripts in criminal cases for indigent defendants.

In Rule 5(b)(1)(A), the standard transcript in criminal cases is expanded to include closing arguments in jury trials and hearings on motions to suppress or motions *in limine* if rulings on such motions is to be at issue in appeal and sentencing hearings if sentencing is an issue on appeal.

As with the amendment to Rule 2, the requirement that the notice of appeal include an issues statement is removed from Rule 5.

In discussion of the civil transcripts in Rule 5(b)(3), reference is made directly to M.R. Civ. P. 91(f)(2), addressing the circumstances in which, for indigent parties, a recording or statement in lieu of a transcript may be submitted in lieu of a transcript for parties whose requests are approved by the trial court pursuant to M.R. Civ. P. 91(f).

Rule 5(c) is clarified to allow transcript formatting choices as permitted by the Administrative Order governing preparation of transcripts. Because Rule 1B includes the definition of a reporter as including the Office of Transcript Production, the similar definition is removed from Rule 5(c).

## **RULE 6. FILING THE RECORD WITH THE LAW COURT**

### **(a) Filing the Record.**

**(1) Twenty-Eight-Day Retention Period.** After receipt of a notice of appeal and, when required, the requisite fee or waiver of payment of fees, the trial court clerk shall retain the record for 28 days, after which the trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the expiration of the 28-day retention period. The 28-day retention period does not apply to extradition appeals. The trial court clerk shall file the trial court record in an extradition appeal with the Clerk of the Law Court within 7 days following the filing of the notice of appeal.

**(2) Effect of Certain Post-Judgment motions.** If, during the 28-day retention period, a timely post-judgment motion listed in Rule 2B(b)(2) or 2B(c)(2) of these Rules is filed, the trial court clerk shall retain the file until the trial court has acted on the motion. Thereafter, the trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the entry of the order on that post-judgment motion.

**(3) Additional Temporary Retention of the Record by Order of the Trial Court.** Notwithstanding the provisions of subsections (1) and (2) of this Rule, if the record or any part thereof is required in the trial court for use pending the appeal, the trial court may order, or the parties may stipulate, that the clerk of the trial court shall retain the record or parts thereof, subject to the request of the Law Court. Upon entry of such an order or stipulation, the trial court clerk shall transmit to the Clerk of the Law Court a copy of the order or stipulation. Upon filing in the Law Court of the brief of the appellee, or at such earlier time as the parties may agree or the Law Court may order, the appellant shall request the clerk of the trial court to transmit the record to the Clerk of the Law Court.

**(4) Record for Preliminary Hearing in the Law Court.** If prior to the time the record is transmitted, a party desires to file and have considered a motion in the Law Court for dismissal, for a stay pending appeal, or for any intermediate order, the clerk of the trial court, at the request of any party, shall transmit to the Law Court such parts of the original record as any party shall designate.

**(b) Contents of the Record.** The trial court clerk's record shall include a copy of the complete docket entries and originals of the following: any opinion, order, or judgment by the trial court; the pleadings; motions and actions thereon;

documentary exhibits; a list of retained exhibits; correspondence between the parties and the trial court; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; and the notice of appeal with the date of filing.

“Documentary exhibits” include papers, maps, photographs, videos, digital images, diagrams, CDs, DVDs, flash drives, and other similar materials. If a documentary exhibit can be easily and inexpensively reproduced, a copy thereof shall be retained by the clerk of the trial court.

Exhibits that consist of tangible objects, such as weapons, articles of clothing, liquids, computers, hard drives, or other electronic devices shall be retained by the clerk of the trial court, except upon order of the Law Court. If a documentary exhibit, other than a trial court transcript or a record of an administrative proceeding originally appealed to the trial court, is of unusual bulk or weight, it shall be retained by the clerk of the trial court, except upon order of the Law Court.

Any party may designate additional portions of the trial court clerk’s record within 7 days after the filing of the notice of appeal.

When more than one appeal is taken following a single trial or hearing, a consolidated trial court clerk’s record shall be prepared.

An indigent criminal defendant or indigent parent in a child protection matter filed by the Department of Health and Human Services may have one copy of the trial court clerk’s record without charge.

**(c)(1) Filing of Reporter’s Transcript.** Unless the Law Court otherwise directs, within 56 days after receipt of the notice of appeal from the clerk of the trial court, the reporter shall file the reporter’s transcript reproduced in accordance with M.R. Civ. P. 5(i)(2) with the Clerk of the Law Court and furnish copies to the parties. With the reporter’s transcript filed with the Clerk of the Law Court, the reporter shall include a CD, DVD, or flash drive containing an electronic copy of the transcript in native .pdf format.

**(2) Delayed Filing of Transcript.** If the reporter anticipates that the 56-day time limit will not be met, the reporter shall file an application with the Clerk of the Law Court requesting additional time at least five days before the expiration of the 56-day time limit. The Clerk of the Law Court is authorized to grant

reasonable enlargements of time. Notwithstanding this or any other provision of these Rules, the party ordering the transcript shall exercise due diligence to assure its timely filing.

**(d) Electronic Records.**

(1) When a record before an administrative agency, in an appeal filed directly with the Law Court, is prepared only in electronic or digital format, without a printed or paper copy of the record, the record filed with the Law Court shall include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself shall include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

(2) The record shall be submitted by use of a CD, DVD, flash drive, or hard drive, with the record submitted in two identical electronic or digital copies by whatever means submitted. The copies of the record shall be in a format that allows them to be read as .pdf documents or is otherwise compatible with Maine Judicial Branch computer systems for reading documents.

**RETYLING NOTE: January 2017**

Rule 6(a)(1) is revised to introduce a 28-day period in which the trial court clerk will retain the trial court record for most appeals. Once the 28-day period expires, the trial court clerk must file the record with the Clerk of the Law Court within 7 days. The purpose of the change, concurrent with amendment to Rule 3(b)-(d) and Rule 6(a)(2), is to hold the record in the trial court to allow for the filing and trial court resolution of timely post-judgment motions listed in Rules 2B(b)(2) and 2B(c)(2).

As part of the change in the time for filing the record in the Law Court, the Rule is also amended to clarify that the record in extradition appeals must be filed within 7 days after filing of the notice of appeal. The amendment to restyled Rule 6(a)(3) also clarifies that the trial court record may be temporarily retained for an additional period of time, by order of the trial court or stipulation of the parties, when such a retention is necessary, for example, to accomplish trial court action permitted by Rule 3(c) of these Rules.

Rule 6(b)-(d) is subject to significant editing to recognize more modern issues and developments relating to preparing records and the context of records,

particularly the treatment of videos and digital evidence and the means by which such videos and digital evidence may be prepared and transmitted to the Court. Further, the portion of the Rule regarding what may be retained in the trial court is expanded to include other items that, absent court order or apparent need, should be retained with the trial court file rather than transmitted as part of the appeal to the Law Court. The amendment also adds indigent parents in appeals of child protection cases filed by the Department of Health and Human Services as entitled to receive without charge a copy of the record on appeal. Presently that entitlement is limited to indigent criminal defendants.

In Rule 6(c)(1), the reference to “native” .pdf format means a .pdf format that allows limited cutting and pasting from the .pdf document to a Word document.

Rule 6(d) is added, addressing appeals filed directly with the Law Court from proceedings in which a record may be prepared only in electronic or digital format, without a printed or paper copy of the record. In such appeals, the record filed with the Law Court must include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself shall include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

Rule 6(d)(2) indicates the procedure for preparing and submitting digital records to the Law Court, which includes submitting the record by use of a CD, DVD, flash drive, or hard drive, with the record submitted in two identical electronic copies by whatever means submitted. Further, the copies must be in a format that allows them to be read as .pdf documents or is otherwise compatible with Maine Judicial Branch computer systems for reading documents.

As this draft is being prepared, the only agency known to prepare and file such electronic or digital records in Law Court appeals is the Maine Public Utilities Commission. However, the Rule anticipates that this record filing practice may expand to other agencies in the future, and may apply to court records after implementation of electronic filing. At that time, with experience gained by implementation of this change, further adjustment of the electronic record filing requirement may be necessary.



## RULE 7. SCHEDULE FOR BRIEFING AND CONSIDERATION

**(a) Notice.** Upon determining that the record on appeal is complete, the Clerk of the Law Court shall promptly send to each counsel of record and each party that is not represented by counsel a written notice stating: (1) the dates on which the appellant's brief, the appellee's brief, and the appendix are due to be filed; (2) the date on which appellant's reply brief, if any, is due to be filed, and (3) the date after which the appeal will be in order for consideration. The due dates stated in the notice for briefing, filing the appendix, and consideration are not affected by any later transcript order, procedural motion, or court order unless the Law Court orders otherwise.

### **(b) Time for Filing Briefs.**

**(1) Track A Appeals.** In a Track A appeal, the appellant shall file the appellant's brief within 28 days (4 weeks) after the date that the record on appeal is complete. The appellee shall file the appellee's brief within 56 days (8 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within ~~10~~14 days after the date that the appellee's brief is filed.

An appeal is a Track A appeal if it results from a trial court judgment that:

- (A)** determines jeopardy pursuant to 22 M.R.S. § 4035;
- (B)** terminates parental rights pursuant to 22 M.R.S. § 4055 or 18-A M.R.S. § 9-204;
- (C)** grants a decree of adoption pursuant to 18-A M.R.S. § 9-308;
- (D)** appoints a guardian for a minor pursuant to 18-A M.R.S. § 5-207;
- (E)** denies the termination of a guardianship pursuant to 18-A M.R.S. § 5-210;
- (F)** grants a guardianship for an adult pursuant to Title 18-A, Article 5, part 3;
- (G)** establishes or changes contact between a parent and child pursuant to 19-A M.R.S. § 1653(2) or (10);

(H) grants or denies a determination of de facto parenthood or parentage in any parentage proceeding defined in 19-A M.R.S. § 1834;

(I) grants contact pursuant to the Grandparents Visitation Act 19-A M.R.S. § 1801 *et seq.*;

(J) involuntarily commits an individual to an institution or a progressive treatment program, or orders the involuntary medication of a person;

(K) determines that a criminal defendant is not criminally responsible by reason of insanity; or

(L) resolves an appeal from an agency's denial of a request pursuant to the Freedom of Access Act, 1 M.R.S. § 400 *et seq.*

**(2) Track B Appeals.** In an appeal from a trial court judgment that does not fall within Track A, the appellant shall file the appellant's brief within 56 days (8 weeks) after the date that the record on appeal is complete. The appellee shall file the appellee's brief within 105 days (15 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within 14-21 days (~~2-3~~ weeks) after the date that the appellee's brief is filed.

**(3) Extensions of Time.** No extensions of time for filing a brief shall be granted except (A) pursuant to Rule 12A(b)(1)(A), (B) when preparation of the brief requires review of transcripts from more than five days of trial testimony and/or more than 2000 pages of documentary exhibits first presented to the court from which the appeal is taken, or (C) upon a showing of a significant and unanticipated emergency that prevents a timely filing of a brief.

**(4) Expediting Appeals.** If a party to an appeal ~~in a Track B case~~ wishes to expedite the appeal, that party may file a motion for expedited ~~process~~ consideration of the appeal, following the requirements for motion practice contained in Rule 10. The motion shall (A) state the reasons why an expedited appeal is requested; (B) propose a schedule for due dates for filing the briefs and the appendix that allows the non-moving party or parties no less time than the moving party to meet the proposed briefing and appendix filing due dates; and (C) demonstrate that the moving party has contacted the non-moving party or parties, and indicate whether the non-moving party or parties support or oppose the motion for expedited consideration of the appeal.

(c) [Reserved]

**(d) Consequence of Failure to File Briefs.** If an appellant fails to comply with this Rule, the Law Court may dismiss the appeal for want of prosecution. If an appellee fails to comply with this Rule, and if oral argument is scheduled, the appellee will not be heard at oral argument except by permission of the Law Court.

**(e) Scheduling of Consideration.** All appeals shall, unless the Law Court otherwise directs, be in order for oral argument or other consideration ~~14~~21 days after the date on which the appellee's brief is due to be filed or is filed, whichever is earlier.

**RETYLING NOTE: January 2017**

The adjustments to Rule 7 follow the editing and internal numbering practices of the rules restyling effort.

The Rule 7 amendments also include a number of substantive changes:

1. The Track A briefing schedule is expanded to include appeals from any parentage proceeding defined in the Maine Parentage Act at 19-A M.R.S. § 1834. The change would extend the Track A coverage to paternity determinations and may also cover a few parental rights determinations not addressed in other parts of the Rule. With this expanded coverage, there is some duplication between subdivision H and other subdivisions in Track A to assure that most matters directly impacting the interests of minor children are covered in Track A.

2. Each category in Track A is given a letter designation, and the time for filing reply briefs is extended from 10 to 14 days to follow the timing practice of using 7 day increments.

3. For Track B appeals, the briefing schedule is not changed except that the time for filing a reply brief for Track B appeals is extended from 2 weeks to 3 weeks after filing of the appellee's brief.

4. A new category for appeals with extra large trial court records is added to the grounds that may support the granting of an extension of time to file briefs. The extra large record must have been created in the court from which the appeal is taken, not in a previous proceeding that was reviewed by the court from

which the appeal is taken. Previous proceedings with large records that would not justify an extension of time to file a brief would include criminal trial records that were reviewed in a post-conviction review proceeding or administrative appeal records that were reviewed in a Rule 80B or 80C proceeding.

5. The capacity to file a motion to expedite appeals, Rule 7(b)(4), previously limited to Track B appeals, now extends to all appeals. In addition, the draft rule adds specific standards for filing and consideration of a motion to expedite an appeal.

6. Rule 7(c) addressing printed and electronic copies of briefs is moved to become restyled Rule 7A(i), placing it more appropriately in the Rule addressing the form of briefs.

#### **RULE ~~9-7A~~. BRIEFS: FORM AND CONTENT~~IN THE LAW COURT~~**

(a) **Brief of the Appellant.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases, statutes and other authorities cited.

(2) A statement of the facts of the case, including its procedural history.

(3) A statement of the issues presented for review.

(4) A summary of the argument, if not adequately presented in the statement of the issues presented for review.

(5) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting each contention, with citations to the authorities and the particular documents or exhibits in the record relied on, with citation to page numbers of the appendix, or addendum to the brief when they exist. The argument shall ~~be preceded by a summary of the argument that~~ includes the standard(s) of appellate review applicable to each issue presented for review, with the standard(s) of review for each issue presented at the start of the discussion of that issue.

(6) An Addendum. The addendum, which is optional, may include copies of items from the trial court record, other than items required to be included in the

appendix to the briefs pursuant to Rule 8. The items in the addendum may include documents, photographs, portions of transcripts, or other items from the record necessary for understanding the specific issues on appeal. Copies of exhibits, including photographs, maps, charts, or diagrams that were presented in color to the trial court or administrative agency shall be reproduced in color by any means, such as scanning or color printing, that reproduces the exhibit in the addendum as close as possible to the way the exhibit appeared in the trial court record.

(7) Items that shall not be included in an appendix by operation of Rule 8(c)(2)(B) & (C) shall not be included in a brief or in an addendum to a brief.

**(b) Brief of the Appellee.** The brief of the appellee shall conform to the requirements of subdivision (a) of this Rule, except that a statement of the issues and standards of appellate review or of the facts or procedural history of the case need not be included unless the appellee is dissatisfied with the statements of the appellant. If the brief of the appellee includes an addendum, the addendum shall not include items required to be included in the appendix to the briefs or items appearing in the addendum to the appellant's brief.

**(c) Reply Brief.** Any reply brief filed by the appellant must be strictly confined to replying to new matter raised in the brief of the appellee. No further briefs may be filed except by leave of the Law Court.

**(d) Briefs on Cross-Appeals.** If a cross-appeal is filed, the brief of the second party to the appeal shall contain the issues and argument involved in the cross-appeal as well as the answer to the brief of the appellant.

**(e) Brief of an Amicus Curiae.**

**(1) General.**

(A) Except as provided in paragraph (2) of this subdivision, or when amicus briefs are invited by a notice from the Law Court, a brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of the Law Court. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(B) An amicus curiae brief shall be filed by the date on which the appellee's brief is due to be filed, unless the Law Court, for good cause shown, grants leave for later filing. Any party may file a reply brief addressing new matter

raised by ~~the~~ an amicus curiae within 14 days after service of the brief of an amicus curiae or within such other time as the Law Court may specify in granting leave for later filing to the amicus curiae.

(C) The motion of an amicus curiae for leave to participate in the oral argument shall be granted only for extraordinary reasons.

## **(2) Maine Tort Claims Act.**

(A) In any action under the Maine Tort Claims Act, 14 M.R.S. §§ 8101 *et seq.*, the Attorney General shall have the right to appear before the Law Court by brief and oral argument as an amicus curiae when the Attorney General is not otherwise appearing on behalf of a party to the action.

(B) Unless all parties otherwise consent, in any such action when the Attorney General has received notice of appeal as provided in Rule 2A(g)(4) 2(a)(5), the Attorney General shall file an amicus brief within the time allowed the party whose position as to affirmance or reversal the brief will support, unless the Law Court for cause shown shall grant leave for later filing. In that event, the Law Court shall specify within what period an opposing party may reply to the Attorney General's brief.

(f)(1) Length of Briefs. The principal brief of any party and any amicus brief shall not exceed 40 pages or 13,000 words, and any reply brief shall not exceed 15 pages or 6,500 words, without prior approval of the Law Court, which shall be granted only upon a showing of good cause. An appellant's reply brief that also responds to an appellee's cross-appeal shall not exceed 30 pages or 10,000 words. Any addendum to an appellant's or appellee's principal brief shall not exceed 50 pages.

(g)(2) Page or Word Limit Calculations. The table of contents, the table of authorities, any addendum filed with an appellant's or appellee's principal brief, and any appendix bound with the appellant's brief are not counted in calculating the page or word limits set in this Rule.

## (g) **Form of Briefs.**

(1) Signature. Briefs shall be signed At least one paper copy of each party's brief filed with the Law Court shall be signed by an attorney who prepared the brief, or, if the party filing the brief was unrepresented by counsel, by the party

filing the brief. The attorney's or party's signature on the brief shall constitute a representation that the brief, together with any associated documents, is filed in good faith and conforms to the page or word limits and the form and formatting requirements of this Rule.

**(2) Form and Formatting.** Briefs may be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper, with printing on only one side of each page. All printed matter must appear in at least 14-point font on opaque, unglazed paper, except that footnotes and quotations may appear in 11-point font. Pages shall be 8-1/2 x 11 inches with typed matter not exceeding 6 1/2 x 9 1/2 inches, and with double spacing between each line of text except for block quotations.

**(3) Binding.** Briefs shall be bound on the left-hand margin with spiral binding or other plastic or metal binding that permits the pages to lie flat when open.

**(4) Front Cover.** The front cover of the brief shall contain: (A) the name of the Supreme Judicial Court sitting as the Law Court and the Law Court docket number of the case; (B) the title of the case; (C) the nature of the proceeding before the Law Court (e.g., Appeal; Report; Certified Question) and the name of the court, agency, or other entity from which the appeal is taken or the question is presented; (D) the title of the document (e.g., Brief for Appellant); and (E) the names and addresses of counsel representing the party on whose behalf the document is filed or the name and address of the party filing the brief, if not represented by counsel.

**(5)** The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray.

**(h) Briefs in an Appeal Involving Multiple Appellants or Appellees.** In an appeal involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference another's brief or any part thereof. Parties may also join in reply briefs. Adoption of a brief or portion thereof may be by letter to the Clerk of the Law Court, with a copy to all other parties, if the adopting party does not otherwise file a brief. A party adopting another's brief or part thereof shall do so on or before the due date for that party's own brief.



**(i) Printed and Electronic Copies.**

**(1) Number of Printed Copies to be Filed and Served.** Unless otherwise ordered by the Law Court, 10 printed copies of each brief shall be filed with the Clerk of the Law Court and 2 printed copies of each brief shall be served on each of the other parties who are either separately represented or unrepresented. The Clerk of the Law Court will not accept a brief for filing unless it is accompanied by acknowledgement or certificate of service upon the other parties.

**(2) Electronic copies.** ~~Parties are encouraged, but not required, to file an electronic copy of each brief filed.~~ ~~An~~One electronic copy of a ~~brief~~each brief filed shall be emailed (1) to the Clerk of the Law Court at the email address provided by the Clerk in the written notice issued pursuant to [Rule 7\(a\)](#), and (2) to each other party that has provided a proper email address with his or her appearance on the appeal. The electronic copy shall be in the form of a single native .pdf file and may appear as unsigned. The electronic copy is due on the same date as the printed copies; however, only the filing of printed copies shall be considered in determining compliance with the filing deadlines set in Rule 7(b). The filing of an electronic copy is in addition to, and does not replace, the required filing of printed copies pursuant to subdivision **(i)**(1). The Clerk of the Law Court may, for good cause shown, relieve a party of one or more of the requirements of this paragraph.

**(j) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed and before either (i) oral argument, or (ii) court conference of an appeal to be decided on briefs, the party may promptly advise the Clerk of the Law Court by letter, with a copy mailed and emailed to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring to the page of the brief addressed by the new citation. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited. A similar filing may occur after oral argument only if invited by the Court at the oral argument.

**RESTYLING NOTE: January 2017**

Rule 7A is a restyling of Rule 9 in the current Maine Rules of Appellate Procedure. This adjustment allows the rules relating to the form and filing of the briefs to appear together in the Appellate Rules. The heading of the rule is



amended to clarify that it applies to form and content of briefs, while Rule 7 relates to scheduling and consideration of briefs.

Rule 7A(e), addressing amicus briefs, is amended to clarify that when the Law Court invites amicus briefs on a particular appeal, the filing of an amicus brief does not require approval of the parties to the appeal, or the filing of a motion.

In the editing of what is now Rule 7A, the repetitive page limit statements that appeared with each type of brief addressed in the rules are eliminated and replaced with a single page limit statement that now appears at Rule 7A(f)(1). In a substantive change, the permitted length of briefs is reduced from 50 pages to 40 pages for principal briefs and from 20 pages to 15 pages for reply briefs. A new category is added for an appellant's reply brief that also replies to an appellee's cross appeal, with a 25-page limit for such briefs. The First Circuit Rules, Fed. R. App. P. 37(a)(7)(A) have limits of 30 pages for principal briefs and 15 pages for reply briefs.

Based on the First Circuit rules effective December 1, 2016, Fed. R. App. P. 32(a)(7)(B), and First Circuit Local Rule 28.1, the revised Rule also includes, as an alternative to page limits, word limits of 13,000 for principal briefs, 6,500 for reply briefs, and 10,000 for reply briefs that also respond to an appellee's cross appeal. The reply brief limit in cases with a cross appeal differs from the larger 13,000 word limit in the First Circuit rules. Longer briefs may be filed with prior approval of the Law Court after filing of a motion demonstrating good cause for having to file a longer brief.

The First Circuit generally applies the same page size spacing and fourteen point font requirements as are stated in Rule 7A. Because the First Circuit is reliant on electronic filing, it also has third alternative method for size calculation by lines in a brief.

The First Circuit October 17, 2016 notice of changes to its word limits for briefs outlines the revised word limits as follows:

Rule 32 reduces the length limits for briefs filed where there is no cross-appeal as follows:

- Principal briefs are limited to 13,000 words (formerly 14,000 words);
- Reply briefs are limited to 6,500 words (formerly 7,000 words);
- Amicus briefs are limited to 6,500 words (formerly 7,000 words).

Rule 28.1 reduces the length limits for briefs filed in cross-appeals as follows:

- Appellant's opening brief is limited to 13,000 words (formerly 14,000 words);
- Appellee's opening and response cross-appeal brief is limited to 15,300 words (formerly 16,500 words);
- Appellant's response and reply cross-appeal brief is limited to 13,000 words (formerly 14,000 words);
- Appellee's reply brief is limited to 6,500 words (formerly 7,000 words);
- An amicus brief in support of an opening brief is limited to 6,500 words (formerly 7,000 words);
- An amicus brief in support of an opening and response cross-appeal brief is limited to 7,650 words (formerly 8,250 words).

Rule 7A(a)(6) is added allowing an addendum to the principal briefs of the appellant and the appellee. A similar document is allowed by First Circuit Local Rule 28.0, though the First Circuit Rule authorizes items to be included in the addendum that M.R. App. P. 8 requires to be included in the Appendix. By amendment to Rule 8, the appendix is now limited to specified mandatory items. The items to be included in the addendum are items formerly included as discretionary items from the trial court record in the appendix. A requirement is added that items be reproduced in the addendum in a manner that makes the item appear as close as possible to the way the item appeared in the trial court record. Photocopying in black and white to make copies of color photos that appear in the trial court record for inclusion in the addendum, or, where allowed, in the appendix, is no longer acceptable.

Rule 7A(a)(7) is added indicating that items that may not be placed in an appendix by operation of Rule 8(c)(2)(B) & (C) also may not be placed in a brief or an addendum to a brief.

Current Rule 7(c) addressing printed and electronic copies of briefs is moved to become Rule 7A(i). Filing of an electronic copy of a party's brief, which is discretionary in current Rule 7(c)(2), is required in the restyled rules. The reference to "native" .pdf is to indicate the .pdf format that allows cut-and-pasting from a .pdf to a Word document. The .pdf documents do not need to indicate an actual signature, which can only be reproduced using the .pdf picture format. As currently, the filing of an electronic copy of a brief does not alter the obligations to file printed copies of the brief.

A provision is added to Rule 7A(g) indicating that an attorney's or party's signature on the brief constitutes a representation that the filing is in good faith and

is in compliance with the rules governing briefing, including page and/or word limits and font size.

Rule 7A(j) is added, tracking closely Rule 28(j) of the Federal Rules of Appellate Procedure. The only difference with the federal rule is that the federal rule (i) allows such filings at any time “after oral argument but before decision” and (ii) does not address appeals considered without oral argument. Proposed Rule 7A(j) limits such filings to the time “before” oral argument or on briefs conference. Filings after oral argument may occur only if invited by the Court.

## **RULE 8. APPENDIX TO THE BRIEFS**

**(a) By Whom Filed.** In every appeal, the party that files the first notice of appeal shall file an appendix to the briefs, except that in child protection matters, 22 M.R.S. §§ 4001-4071, the State shall be responsible for the filing of the appendix.

**(b) Number of Copies, When Filed.**

**(1)** Eight copies of the appendix shall be filed with the appellant’s brief. ~~no later than 14 days after the date on which the appellant’s brief is due to be filed.~~ In Title 22 child protective cases, the State shall file the appendix with the Court no later than 14 days before the date on which the appellant’s brief is due to be filed. The parties may agree to a later time for the filing of the appendix without notice to or leave of the Law Court, provided that the appendix shall be filed no later than the date that the appellee’s brief is filed or is due to be filed, whichever occurs first.

**(2)** When the appendix is filed with the Court, a copy shall be served on each other party to the appeal.

**(c) Contents, Generally.** The purpose of the appendix is to make available to each Justice of the Court those documents from the record that are essential particularly important to the review of the issues on appeal. ~~The Law Court always has the entire original trial court file available to it for reference; therefore:~~

**(1)** The appendix shall contain only those documents listed below as mandatory.

(2) The appendix shall not include:

(A) any documents or images that are not a part of the trial court file or the record on appeal, other than a supplement of legal authorities authorized in subdivision (l) hereof;

(B) any documents that are, or include, pictures, videos, or other images (i) of persons under 18 years of age, (ii) of adults subject to a guardianship or mental health commitment proceeding, or (iii) that depict nudity or sexual or sexualized acts; or

(C) except for an appendix prepared by the State in a child protective case, any documents made confidential by statute or court order that are not required to be included in the appendix by subdivisions (g) or (h) hereof.

(3) Documents other than those that are designated “mandatory” that are necessary for understanding the specific issues on appeal should be included in the addendum to the appellant’s or the appellee’s brief. ~~below should be included only if they are important to the issues on appeal, and documents that are not “mandatory” shall be placed in the appendix following the “mandatory” documents.~~

(4) Duplication must be avoided. No document shall appear in the appendix more than once nor should documents that appear in the appendix be duplicated in any party’s addendum.

(5) An appendix that (i) fails to include mandatory documents; (ii) does not present documents in the required order: first documents required by subdivision (g), then documents required by subdivision (h), ~~then other documents;~~ (iii) includes duplication of documents; or (iv) otherwise is not prepared in compliance with these Rules may be rejected, with the party that prepared the appendix being required to prepare and file a replacement appendix that complies with these Rules or being subject to another appropriate sanction, including dismissal of the appeal.

**(d) Contents, Agreement of the Parties.** The parties ~~are encouraged to~~ shall confer and attempt to reach agreement on the contents of the appendix that complies with this Rule. If the parties do not agree:

(1) No later than 14 days before the appellant's brief is due to be filed, the appellant shall deliver to the appellee a list of the documents that the appellant proposes to include in the appendix. In child protection cases in which the State is the appellee, the appellant shall deliver to the appellee the list of the documents that the appellant proposes to include in the appendix at least 14 days before the appendix is due to be filed.

(2) If the appellee wishes to have additional documents included in the appendix, the appellee must, within 7 days after notice of the appellant's list of documents, designate additional documents for inclusion in the appendix, and the appellant shall include those documents in the appendix, unless otherwise ordered by the court.

(e) **Content, Costs.** Unless otherwise agreed by the parties, the appellant shall be responsible for the costs of producing the appendix. If the appellee designates documents for inclusion ~~that are not mandatory documents~~ and the appellant concludes that such documents are not mandatory documents, are unnecessary to a determination of the issues, the appellee shall be responsible for advancing the additional cost of producing those documents. Following an appeal in a civil case, any of the costs incurred in the production of the appendix may be taxed to either party by the Law Court pursuant to Rule 13.

(f) **Content, Format.**

~~The appendix shall be bound in white stock, and~~

(1) Each page of the appendix shall be numbered consecutively. If the appendix consists of 20 pages or fewer, it may be bound with the appellant's brief. Otherwise, it shall be separately bound with a white cover page designated "Appendix" and carrying the Law Court docket number, case title, and appearances of counsel or unrepresented parties for the appeal.

(2) The appendix shall be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper. Printing shall be on both sides of the paper. Except for oversize or electronic exhibits, the paper shall be 8 1/2 x 11 inches.

(3) The appendix shall be spiral bound or bound by a similar process using plastic or metal binding that permits the pages to lie flat when opened. Plastic or metal spikes, staples, or posts shall not be used in binding.

**(4)** Oversize exhibits—such as plans or maps—and electronic exhibits on disc or another medium may be attached to the appendix in any method that permits the appendix to be handled as a bound volume.

**(5)** ~~No volume of an appendix shall exceed 150 sheets of paper printed on both sides, not including oversize and electronic exhibits, and no appendix shall exceed one volume without prior approval of the Court.~~

**(g) Contents, Mandatory - ALL APPEALS.** The following documents shall be contained in the appendix in the following order:

**(1)** A table of contents;

**(2)** All docket entries in the proceedings below;

**(3)** Each trial court decision, ruling, or judgment that will be addressed in the appeal, including the original final judgment and any subsequent orders amending the original final judgment:

**(A)** If the decision is in written form, a copy of the decision shall be included;

**(B)** If the decision or judgment includes more than one order or set of findings, a copy of each court action that constitutes the decision or judgment shall be included;

**(C)** If any part of the decision was stated orally on the record, a copy of the transcript of the decision shall be included.

**(4)** The complaint, indictment, information, petition, motion, or post-judgment motion that initiated the proceeding in the trial court and any subsequent amendment to the document that initiated the proceeding. ~~charging instrument, or initiating document.~~

**(5)** Any pre-judgment or post-judgment motion or petition that was subject to an order or other action or inaction by the trial court that is at issue in the appeal. If the motion or other request to the trial court was made orally, a transcript of the on-the-record discussion of the motion or other request to the trial court, including the court's ruling, shall be included.

**(h) Contents, Mandatory - SPECIFIC PROCEEDINGS.** Following the contents required by subdivision (g), the appendix shall contain the following contents for specific proceedings:

**(1) Summary Judgment.** If the appeal relates to the entry or denial of a summary judgment, a copy of the parties' statements filed pursuant to M.R. Civ. P. 56(h).

**(2) State and Local Government and Administrative Appeals.**

**(A)** If the appeal addresses a decision of a State or local administrative agency, including a municipality, board, commission, or other administrative body, a copy of the agency's decision, whether written or transcribed.

**(B)** If the agency decision was based on a municipal ordinance, a State or local regulation, or a Private and Special Law, a copy of the relevant section or sections from that ordinance, regulation, or Private and Special law, shall be included. For appeals from decisions of a municipal agency, a copy of the section or sections of the municipal ordinance that establish the authority of the agency to act on the matter subject to the appeal shall be included. Copies of relevant sections of the Maine Revised Statutes shall not be included.

**(3) Jury Instructions.** If the appeal includes a challenge to a jury instruction, a copy of the transcript of the instruction, a copy of the transcript containing the objection to the instruction, and copies of any relevant requests to the trial judge for different instructions than those given to the jury by the trial judge.

**(4) Jury Verdict, Special Verdict Form.** If the appeal is from a judgment entered on the verdict of a jury, and the jury reported its verdict on a written form, a copy of that form and a transcript or copy of the objections to that form, if any.

**(5) Contract, Deed, Lease, Trust, Will, or Insurance Policy.** If the appeal relates to the interpretation or enforcement of a contract, deed, lease, trust, will, or insurance policy: a copy of that document.

**(6) Family Domestic Relations, Parentage, or Child Protection Matters.** If the appeal is from a decision related to a family-domestic relations, parentage, or child protection matter: the child support affidavits, if child support is

at issue on appeal; a transcript or recording of the testimony concerning the issues on appeal; the financial statements of the parties, if property distribution or child or spousal support is at issue on appeal; the report of the guardian ad litem, if any, if a parental rights or parentage decision is at issue on appeal.

**(7) Criminal Appeals, Transcript.** If the appeal is from a decision in a criminal matter: the presentence report, if any, if a sentence is at issue on appeal; the search warrant or arrest warrant and any affidavit in support of issuance of the warrant, if a search warrant or arrest warrant or actions pursuant to a search warrant or arrest warrant are at issue on appeal; and the Attorney General's authorization, if required, for any State appeal brought pursuant to Rule 21. The appendix should include only those limited and focused portions of the transcript that are necessary to a full understanding of the issues on appeal.

**(i)** [Reserved]

~~**(i) Contents, Discretionary.** The following materials may be included in an appendix but are not required:~~

~~**(1) Exhibits.**~~

~~If particular exhibits are important to the Court's understanding of the issues on appeal, the appendix may include copies of those exhibits.~~

~~**(2) Other Pleadings.**~~

~~Other pleadings or filings, but only if they are important to the Court's understanding of the issues on appeal.~~

**(j) Failure to File an Appendix.** The failure to file an appendix, or the failure to include in the appendix any document required to be included as set out in this Rule, may result in the dismissal of the appeal or other sanction.

**(k) Hearing on the Original Record Without the Necessity of an Appendix.** The Law Court may, on good cause shown in a motion filed prior to the filing deadline for appellant's brief, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the Law Court may require.

**(l) Supplement of Legal Authorities.** A supplement of legal authorities is not required. The parties may, at their discretion, provide the Court with a brief



supplement, separate from the appendix, containing important, relevant legal authorities such as statutes or court decisions from other jurisdictions. It is not necessary to provide copies of any or all cited authorities. The supplement of legal authorities is not counted in computing the appendix page limit.

### **RETYLING NOTE: January 2017**

As revised the appendix is limited to the mandatory items from the trial court record specified in Rule 8. Other items from the trial court record that are important to consideration of the issues on appeal, unless barred from inclusion in the appendix or addendum by Rule 8(c)(2), may be presented as part of the addendum to the appellant's or the appellee's brief.

In other changes, the reference to "Family matters," Rule 8(h)(6), is expanded to include domestic relations, parentage, and child protection matters. Further, the mandatory items that must be included in the appendix are expanded to include pre- or post-judgment motions that are at issue on appeal; wills, deeds, leases, trusts, or insurance policies that are at issue on appeal; and several items related to criminal appeals. Because Rule 8 now mandates what must be included in an appendix and limits the appendix to those items, the page limit is removed.

In addition to minor editing, a substantive clarification and change to Rule 8 is a listing of items that must not be included with an appendix or a brief or an addendum to a brief. Rule 8(c)(2) is expanded to bar inclusion of images of minors and of adults subject to guardianship or mental health commitment proceedings and images that depict nudity or sexual or sexualized acts, and, except for child protective cases, any documents deemed confidential by statute or court order, except documents that are subject to the mandatory inclusion requirements of Rules 8(g) and (h). Because Rules 8(g) and (h) speak primarily to pleadings, docket entries, court orders, and the like, it would be rare for a document made confidential by statute or court order to be subject to mandatory inclusion in an appendix. The items excluded from the appendix do remain in the record and are available for Law Court review on appeal.

### **RULE 9. RESERVED** **[Moved to become Rule 7A.]**

## **RULE 10. MOTIONS AND OTHER PAPERS IN THE LAW COURT**

### **(a) Motions.**

(1) Unless another form is prescribed by these Rules, an application to the Law Court for an order or other relief shall be by motion, ~~shall be typewritten~~, shall state with particularity the grounds therefor, and shall set forth the order or relief sought. Supporting papers shall be served and filed with the motion. Motions and supporting papers shall be typewritten and shall conform to subdivision (d) of this Rule.

(2) Any motion filed by counsel representing a party in an appeal that seeks an extension of time or a delay of more than 7 days or that seeks a continuance of any scheduled hearing, oral argument, or other court proceeding, shall indicate that a copy of the motion has been sent to the party represented by that counsel and a copy shall be sent to the party represented by counsel filing the motion.

(3) Motions will not necessarily be granted even though assented to by other parties.

(4) The Chief Justice, or another Justice designated by the Chief Justice, may act on motions on behalf of the Court, or may refer motions to the entire Court. All motions will be acted on without oral argument unless otherwise ordered. Motions may be acted upon at any time, without waiting for a response thereto.

**(b) Certificate of Service Required.** Every motion shall be served on the other parties to the appeal and shall be accompanied by a certificate of service upon the other parties. If the certificate is not included with the motion, the Clerk of the Law Court shall return the motion as incomplete. The Clerk will not docket the attempted filing but will retain a copy and the notice of return. If the moving party refiles the motion with the proper certificate of service, the complete motion will then be accepted and docketed.

**(c) Responses.** Any party that plans to file a response to a motion shall do so within 7 days after the motion is filed. The Law Court may shorten or extend the time for responding to any motion and may act on a motion before receiving any response. Any supporting papers shall be served and filed with the response. Responses and supporting papers shall be typewritten and shall conform to subdivision (d) of this Rule.

**(d) Form of Motions and Other Papers; Number of Copies Required.** Motions, responses, and other papers not required to be produced in a manner prescribed by Rule ~~9(f)~~7A(g) may be typewritten or otherwise duplicated upon opaque, unglazed paper 8 1/2 x 11 inches in size and shall be stapled in the upper-left corner. The typed matter must be double spaced in at least ~~12-14~~-point font, except that footnotes and quotations may appear in 11-point font. Each paper shall contain a caption setting forth the name of the Court (i.e., the Supreme Judicial Court sitting as the Law Court), the title of the case, the Law Court docket number, and a brief descriptive title of the paper. The original and one legible copy of every motion, response, and other paper shall be filed with the Court. Additional legible copies shall be filed as requested by the Clerk of the Law Court.

### **RESTYLING NOTE: January 2017**

Rule 10 relating to filing of motions and other papers in the Law Court other than briefs and appendices is subject to only minor editing except for one substantive change. Rule 10(a)(2) is adopted to require that any motion filed by counsel representing a party that seeks an extension of time or a delay of more than 7 days or seeks a continuance of a scheduled hearing, oral argument, or other proceeding must be copied to the party that counsel represents. The proposed amendment is designed to eliminate or reduce opportunities for counsel to place blame for delays that they themselves have sought onto either the Court or other parties.

As with briefs, the amended Rule 10(d) requires that the text of motions, other than footnotes or quotations, must be in 14-point font. This is consistent with First Circuit practice.

## **RULE 11. CONSIDERATION BY THE LAW COURT**

### **(a) ~~Notice of Time~~Scheduling of Oral Argument.**

**(1) Scheduling.** If the ~~ease~~appeal is set for oral argument, the Clerk of the Law Court shall advise all parties of the time and place at which oral argument will be heard.

**(2) Continuance.** An application for continuance of oral argument must be made by motion filed reasonably in advance of the date fixed for hearing. When a request to continue an oral argument is granted, the Law Court shall have

the option of considering the appeal on briefs without oral argument to avoid undue delay in consideration and resolution of the appeal.

**(b) Time Allowed for Argument.** Each side will be allowed up to 15 minutes for argument. The appellant may reserve up to 3 minutes for rebuttal. On motion filed at least 7 days in advance of the date scheduled for oral argument and for good cause shown, the Law Court may allow additional time for argument.

**(c) Order and Content of Argument.** The appellant is entitled to open and conclude the argument.

**(d) Cross and Separate Appeals.** A cross or a separate appeal in the same case shall be argued with the initial appeal at a single hearing, unless the Law Court otherwise directs. If separate parties support the same argument, care shall be taken to avoid duplication of argument at the hearing.

**(e) Nonappearance at Argument.** If an appellant fails to appear for oral argument, the Law Court may dismiss the appeal, or it may hear the argument on behalf of the appellee if present and decide the case on the briefs and the argument heard. If an appellee fails to appear at oral argument, the Law Court may hear argument on behalf of the appellant and decide the case on the briefs and argument heard. If neither party appears, the case will be decided on the briefs unless the Law Court otherwise directs.

**(f) Use of Exhibits at Argument.**

**(1) Disclosure.** Any party planning to use any exhibit or display at oral argument shall notify the other parties to the oral argument and the Clerk of the Law Court of the planned use of the exhibit or display at least one business day prior to the time scheduled for oral argument.

**(2) Display.** Any exhibit or display must be presented in a manner that permits it to be easily seen by each of the Justices without limiting observation of the Court by the public or opposing parties or counsel.

**(3) Removal.** An exhibit or display shall be removed upon completion of the argument for which it is used unless the opposing party requests that the exhibit remain available for use in that party's argument.

**(g) Submission on Briefs.**

(1) The Clerk of the Law Court will advise counsel or an unrepresented party when the Law Court has decided to consider a case on briefs without oral argument. Within 7 days after the Clerk has sent this notice of the decision to consider the case on briefs, a party may file a statement setting forth the reasons why oral argument should be entertained and requesting the same.

(2) In an appeal scheduled for oral argument, on motion joined ~~in~~ by all parties and for good cause shown, the Law Court may allow the parties to submit ~~a case~~ the appeal on the briefs without oral argument.

### **RESTYLING NOTE: January 2017**

Rule 11 is subject to editing for clarification in the restyling process. It adds a note in Rule 11(a)(2) that when a continuance of oral argument is requested and granted, the Court may reset the appeal for consideration on briefs. This added note reflects current practice of the Court.

## **RULE 12. COMPOSITION, CONCURRENCE, AND SESSIONS OF THE LAW COURT**

### **(a) Constitution of the Law Court; Concurrence Required.**

(1) When sitting as the Law Court to determine questions of law arising in any civil or criminal action or proceeding, the Supreme Judicial Court shall be composed of those Justices then available to sit and qualified to act. When an appeal is in order for conference or oral argument and fewer than three of the Justices are then available and qualified to act, the matter shall stand continued to such time as the Court shall determine.

(2) The Court shall hear and determine such questions of law by the concurrence of a majority of the Justices sitting and qualified to act. A qualified Justice may participate in a decision even though not present at oral argument.

**(b) Sessions of the Law Court.** The Supreme Judicial Court sitting as the Law Court shall hold sessions each year at such times and places as shall be determined by the Chief Justice.

**(c) Decisions of the Law Court.** Decisions of the Law Court may be reported by several methods, including a signed opinion, a per curiam opinion, or a

memorandum of decision. A memorandum of decision decides an appeal but does not establish precedent and will not be published as an opinion of the Court on the Judicial Branch website or in the Maine Reports.

### **RESTYLING NOTE: January 2017**

Rule 12 is subject only to minor editing for clarification and additional internal numbering in the restyling process. It includes no substantive changes.

### **RULE 12A. THE CLERK OF THE LAW COURT**

**(a)(1) Clerk's Office and Filing.** All papers required by these Rules to be filed with the Law Court or with any Justice of the Law Court shall be filed with the Clerk of the Law Court. Filing shall occur at the office of the Clerk of the Law Court, 205 Newbury Street, Room 139, Portland, Maine 04101-4125, unless another office is designated by order of the Chief Justice. The office of the Clerk of the Law Court shall be open and available to receive filings during such hours as the Chief Justice may designate on all days except Saturdays, Sundays, legal holidays, and such other days as the Chief Justice may designate.

**(2) After-Hours Filings.** The Clerk of the Law Court may not, unless authorized by a Justice of the Law Court, accept filings for other courts or accept filings, pleadings, or other documents filed with or left for the Clerk after normal business hours, except when a Justice of the Law Court has explicitly authorized an after-hours filing on a specific date. Any document filed after hours shall be date-stamped and deemed to be filed on the next regular business day.

**(3) Fax Filings.** Rule 5(j) of the Maine Rules of Civil Procedure is incorporated by reference herein to govern filings or attempts at filings by fax machine.

**(4) Electronic Filings.** Except as otherwise permitted or required by these Rules, filings by electronic transmission of data or by means of a ~~compact disk (CD)~~ CD, DVD, flash drive, or any other method for electronic or Internet filing in place of the filing of paper documents required by these Rules is not permitted.

**(b) Clerk's Authority.** The Clerk of the Law Court is authorized to take the following actions for the Court:

- (1) Grant motions, pursuant to M.R. App. P. 10(b) to:
- (A) Enlarge the time for the filing of a brief or appendix for up to 7 days.
- (B) With the agreement of the parties, consolidate appeals involving the same parties.
- (2) Dismiss an appeal, pursuant to M.R. App. P. 7(d), when the appellant has failed to file the required brief within 7 days after expiration of the time specified by M.R. App. P. 7(b). ~~and has not responded, within 10 days, to a notice from the Clerk of the Law Court that the brief has not been timely filed.~~
- (3) Dismiss sentence review proceedings filed pursuant to M.R. App. P. 20, when the sentence sought to be appealed was less than one year of incarceration, as addressed in 15 M.R.S. § 2151.

Any order entered by the Clerk of the Law Court, pursuant to paragraphs 1, 2, or 3, above, granting or denying a motion to enlarge time or dismissing an appeal may be reviewed by a single justice of the Law Court upon the filing of a motion for review, pursuant to M.R. App. P. 10(b), within 7 days after the entry of the Clerk's order from which review is sought.

(4) Enter Orders on Court Actions. After appropriate consideration by the Court, or a panel thereof, the Clerk shall enter orders reflecting the Court's action on motions for reconsideration pursuant to M.R. App. P. 14(b), and petitions to allow full appellate review pursuant to M.R. App. P. 19, 20, or 23.

### **RETYLING NOTE: January 2017**

Rule 12A is subject to editing for clarification, including upgraded references to digital transfer devices, in the restyling process. It includes only one substantive change. That change amends Rule 12A(b)(2) to eliminate the direction to the Clerk of the Law Court to notify an appellant when that appellant's brief has not been timely filed. Instead, the Clerk is directed to dismiss the appeal if the appellant's brief is not filed 7 days after the filing deadline.

### **RULE 12B. PUBLIC ACCESS TO PROCEEDINGS AND RECORDS**

(a) **Record on Appeal.** The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any



person to the same extent as that record was available for inspection and copying in the trial court.

**(b) Law Court File.** The file maintained by the Clerk of the Law Court for each appeal, other than files for appeals from child protection proceedings and other files made confidential by statute, shall be available for public inspection and copying, except that any documents or images that were transmitted to the Law Court by the trial court under seal and any documents identifying parties, and witnesses, or jurors shall be available for inspection and copying only to the same extent as in the trial court.

**(c) Briefs.** The briefs filed with the Law Court, other than briefs in appeals from child protection proceedings, shall be available for inspection and copying by any person.

**(d) Appendices.** The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters: an appeal from a child protection proceeding; proceedings involving an adoption or guardianship or a petition for adoption or guardianship; juvenile proceedings in which the record is sealed in the trial court; any proceeding in which the care, custody, and support of a minor child is an issue; and any proceeding in which a document that is confidential by statute or was filed under seal in the trial court is contained in the appendix.

No appendix shall be filed as “under seal” or “confidential” except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4).

**(e) Oral Arguments.** Oral arguments on the merits of appeals are public proceedings.

**(f) Decisions.** Opinions of the Law Court on appeals and decisions of single Justices of the Law Court are public documents.

#### **RETYLING NOTE: January 2017**

Rule 12B is subject to minor editing for clarification, particularly regarding treatment of certain confidential documents, in the restyling process. It includes no substantive changes.



## RULE 13. COSTS AND INTEREST ON JUDGMENTS IN CIVIL CASES

**(a) To Whom Costs Are Allowed.** Costs shall be taxed against the unsuccessful party to a civil appeal unless the Law Court otherwise directs. If an appeal in a civil case is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court. When a judgment is affirmed in part, costs shall be allowed only as ordered by the Law Court.

~~**(b) Costs for Briefs.** The actual cost of printing or otherwise reproducing briefs, but not more than \$5.00 per page, for not more than a total of 75 pages, shall be taxable in the Law Court. A party who desires such costs to be taxed shall state them in a verified bill of costs which the party shall file with the Clerk of the Law Court, with proof of service, within 14 days after the issuance of the mandate.~~

~~**(c) Further Costs in the Law Court.** Costs in the Law Court shall also be allowed as follows:-~~

~~**(1)** Travel and attendance as in the trial court;~~

~~**(2)** Costs for transcripts made by a reporter may be taxed at the rate actually paid to the reporter, not exceeding the rate established by order of the Chief Justice of the Supreme Judicial Court. Costs for copies of the appendix may be taxed at the rate actually paid for reproduction, not exceeding \$5.00 per page for pages averaging 240 words each (exclusive of initials "Q" and "A"); and~~

~~**(3)** Other allowable items of costs as determined by the provisions of M.R. Civ. P. 54(d)-(g), when such items are incident to the appeal.~~

**(b) Costs in the Law Court.** Costs in the Law Court shall be allowed as follows:

**(1) Briefs.** The actual cost of printing or otherwise reproducing briefs, but not more than \$5.00 per page, for not more than a total of 70 pages for an initial brief and 20 pages for a reply brief.

(2) **The Appendix.** The actual cost of printing or otherwise reproducing the appendix, but not more than \$5.00 per page, for not more than a total of 300 pages.

(3) **Any Transcripts.** The cost of transcripts made by a reporter may be taxed at the rate actually paid to the reporter, but not exceeding the rate established by order of the Chief Justice of the Supreme Judicial Court.

(4) **Travel.** Travel and attendance as in the trial court.

(5) **Other Costs.** Other items of costs may be allowed as determined by the provisions of M.R. Civ. P. 54(d)-(g), when such items are required to prosecute or defend the appeal.

(c) **Filing Bill of Costs.** A party that desires such costs to be taxed shall state them in a verified bill of costs, which the party shall file with the Clerk of the Law Court, with proof of service, within 14 days after the issuance of the mandate.

**(d) Clerk to Certify Costs.** On request of the prevailing party the Clerk of the Law Court shall certify in detail to the trial court the amount of costs taxed in the Law Court.

**(e) Interest on Judgments.** When a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable as provided by law. When a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the opinion shall contain instructions with respect to allowance of interest if the prevailing party's claim to interest has been brought to the attention of the Law Court by brief or oral argument.

**(f) Sanctions.** If, after a separately filed motion or a notice from the court and a reasonable opportunity to respond, the Law Court determines that an appeal, motion for reconsideration, argument, or other proceeding before it is frivolous, contumacious, or instituted primarily for the purpose of delay, it may award to the opposing parties or their counsel treble costs and reasonable expenses, including attorney fees, caused by such action.

### **RESTYLING NOTE: January 2017**

Rule 13 is subject to editing for clarification and additional separation and internal numbering in the restyling process. Rule 13(b)(1) is amended to limit

recoverable costs for briefs to 70 pages for an initial brief including an addendum, if any, and 20 pages for a reply brief. The current Rule 13(b) limits recoverable costs for briefs to a total of 75 pages. While the appendix page limit is removed from Rule 8, recoverable costs for printing an appendix are limited to 300 pages.

#### **RULE 14. MANDATE; RECONSIDERATION; AND SUSPENSION OF THE RULES IN THE LAW COURT**

**(a) Issuance of Mandate.** The mandate of the Law Court, with an opinion or order resolving any appeal, shall be issued by the Clerk of the Law Court by transmitting an attested copy thereof to the trial court.

**(1) Criminal Appeals.** The mandate of the Law Court in a criminal appeal shall issue ~~promptly after the day that the~~ decision resolving the appeal is published or the first business day thereafter. Copies of the mandate shall be emailed to those parties to the appeal who have provided a proper email address. No paper copy of the mandate will be provided to the parties to the appeal who are represented by counsel.

**(2) Civil Appeals.** The mandate of the Law Court in a civil appeal involving a child protective matter, a parental rights matter, a guardianship, an adoption, a contempt, or a temporary or permanent injunction shall issue the day that the decision resolving the appeal is published or the first business day thereafter. The mandate of the Law Court in ~~a civil case any other civil appeal~~ shall issue 14 days after the date of decision of the Law Court, unless the time is shortened or enlarged by order of the Law Court. ~~The mandate shall be issued by the Clerk of the Law Court by transmitting an attested copy thereof to the trial court.~~

**(3)(A) Stay of the Mandate.** A motion for a stay of the mandate must be filed with the Clerk of the Law Court ~~prior to the issuance of the mandate~~ within 14 days after the date of the decision. The timely filing of a motion for reconsideration in a civil appeal, ~~prior to issuance of the mandate,~~ will stay the mandate until disposition of the motion unless otherwise ordered by the Law Court. The issuance of the mandate may be stayed or the effect of a mandate already issued may be stayed on motion for good cause shown, accompanied by an affidavit of the moving party or the moving party's attorney setting forth all relevant facts.

**(B) Law Court Action.** After receipt of a motion for stay of the mandate, the Law Court may act on the motion sua sponte or seek comments from other parties to the appeal. After appropriate consideration, the Law Court may grant or deny the motion, and if the motion is granted in whole or in part, attach such terms and conditions to granting that stay as it deems just.

**(C) Appeals to the United States Supreme Court.** When the issuance of the mandate has been stayed pending a petition to the Supreme Court of the United States for a writ of certiorari, the receipt by the Clerk of the Law Court of an order granting the petition shall be effective to continue the stay until final disposition of the matter by the Supreme Court of the United States.

**(b) Motions for Reconsideration.**

**(1)(A)** A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall be filed with the Clerk of the Law Court within 14 days after the date of that decision. The motion shall state with particularity the points of law or fact that the moving party asserts the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the moving party desires to present. An original and seven copies of the motion and any supporting papers shall be filed and shall conform to Rule ~~9(f)~~10(d).

**(B)** No response to a motion for reconsideration shall be filed unless requested by the Law Court. The motion is not subject to oral argument except by specific order of the Court.

**(2)** A motion for reconsideration will not be granted except at the instance of a Justice who concurred in the decision and with the concurrence of a majority of the Justices who participated in the original decision and remain available and qualified to act on the motion.

**(3)** If a motion for reconsideration is granted, the Law Court may make a final disposition of the cause without re-argument, may restore it to the calendar for reconsideration, or may make such other orders as are appropriate. Frivolous or repetitive motions for reconsideration may result in the imposition of appropriate sanctions.

**(c) Suspension of Rules.** In the interest of expediting decision upon any matter, or for other good cause shown, the Law Court may modify or suspend any

of the requirements or provisions of these Rules, except those of Rule 2 and those of Rule 14(b), on application of a party or on its own motion, and may order proceedings in accordance with its direction.

### **RETYLING NOTE: January 2017**

Rule 14 is amended to add internal separations and numbering consistent with the restyling practice. Consistent with what appears to be current practice, the form for motions for reconsideration must follow the form for other motions filed with the Law Court, as specified in Rule 10(d). The previous Rule had referenced former Rule 9(f), which addressed the form for briefs, including covers.

The mandate rule is also clarified to specify that the mandate in civil cases involving child protective matters, parental rights matters, guardianship, contempt, or temporary or permanent injunctions shall issue promptly after decision. As presently, the mandate in other civil appeals would issue 14 days after decision. However, the rules are also clarified to indicate that a stay of the mandate or the effect of the mandate may be sought for any further appeals or reconsideration so that such appeals or reconsideration are not barred if requested within 14 days after the date of the Law Court decision at issue.

### **~~RULE 15. TIME COMPUTATION.~~**

~~Rule 6(a) of the Maine Rules of Civil Procedure shall govern the computation of any period of time prescribed or allowed by these rules.~~

### **~~RULE 16. DEFINITIONS~~**

~~Unless specified to the contrary, the following words, whenever used in these rules shall have the following meanings:~~

~~1. The term “appellant’s attorney” or “appellee’s attorney” or any like term shall include the party appearing without counsel and the word “appellant” or “appellee” or any like term shall include the party appearing with counsel.~~

~~2. The word “Court” or “Trial Court” shall include any judge of the Probate Court, any judge of the District Court, any justice of the Superior Court, any single justice of the Supreme Judicial Court, and any administrative agency from which an appeal lies directly to the Law Court.~~

~~3. The term “plaintiff’s attorney” or “defendant’s attorney” or any like term shall include the party appearing without counsel and the word “plaintiff” or “defendant” or any like term shall include the party appearing with counsel.~~

~~4. The word “reporter” means a court reporter or a transcriber of an electronically recorded record.~~

**RULES 15 17-18. RESERVED**  
**[Rules 15 and 16 moved to become Rules 1A and 1B.]**

**II. SPECIAL APPEAL PROCEEDINGS**

**RULE 19. DISCRETIONARY CRIMINAL APPEALS**

**(a) Appeals Covered.** This Rule covers those criminal appeals that are subject to preliminary review and full consideration as a matter of discretion by the Law Court, other than the appeals from sentences of a year or more that are addressed by M.R. App. P. 20. The appeals covered by this Rule include:

(i) An appeal from a ruling on a motion to correct or reduce a sentence, pursuant to M.R.U. Crim. P. 35(a) or (c), when the appeal is taken by the defendant;

(ii) An appeal by a person whose probation is revoked, when the appeal is authorized pursuant to 17-A M.R.S. § 1207(2);

(iii) An appeal by a person whose supervised release is revoked, when the appeal is authorized pursuant to 17-A M.R.S. § 1233;

(iv) An appeal by a person determined to have inexcusably failed to comply with a court-imposed deferred disposition requirement and thereafter sentenced, when the appeal is authorized pursuant to 17-A M.R.S. § 1348-C;

(v) An appeal by a person whose administrative release is revoked, when the appeal is authorized pursuant to 17-A M.R.S. § 1349-F;

(vi) An appeal from a final judgment in a post-conviction review proceeding pursuant to 15 M.R.S. § 2131(1), when the appeal is taken by the petitioner;

(vii) An appeal from a final judgment in an extradition proceeding pursuant to 15 M.R.S. § 210-B(1), when the appeal is taken by the petitioner;

(viii) An appeal from an order on a motion to order DNA analysis, pursuant to 15 M.R.S. § 2138(6), when the appeal is taken by the convicted person or by the State;

(ix) An appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of court records and related criminal justice records or a subsequent vacating of that determination and record correction, pursuant to 15 M.R.S. § 2184(1), when the appeal is taken by the person who filed a motion or on whose behalf the motion was filed; and

(x) An appeal from a final judgment entered under 15 M.R.S. § 2254(5) or (7), pursuant to 15 M.R.S. § 2258(1), when the appeal is taken by the person who filed the motion for obtaining the special restrictions on dissemination and use of criminal history record information relating to a qualifying criminal judgment.

**(b) Rules Applicable.** The discretionary appeals covered by this Rule shall proceed in accordance with the Maine Rules of Appellate Procedure, subject to the modifications stated in this Rule or as otherwise required by statute.

**(c) Memorandum Required on Appeal.** Within 21 days after the date on which the transcript is filed in the Law Court, or, if no transcript is ordered, within 21 days after filing a notice of appeal, the party filing the appeal shall file with the Clerk of the Law Court 8copies of a memorandum giving specific and substantive reasons why the issue or issues identified for prosecution of the appeal warrant the issuance of a certificate of probable cause authorizing consideration of the appeal on the merits by the Law Court. The memorandum shall not exceed 20 pages and shall otherwise conform to the requirements of M.R. App. P. 9(f) relating to the form of briefs. On motion and for good cause shown, the Law Court may allow additional time to file a memorandum.

No reply memorandum shall be filed by ~~the State~~ a party who did not file the appeal.

Until the Law Court rules on the request for a certificate of probable cause, no further briefing pursuant to M.R. App. P. 97 or 7A is required and no appendix pursuant to M.R. App. P. 8 shall be prepared.

**(d)(1) Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal.** Unless the Law Court otherwise directs, within 56 days after receipt of a copy of the notice of appeal and transcript order form, the reporter shall prepare and file a transcript of the hearing that is the subject of the appeal, in the event that a hearing on the matter was held and recorded. The transcript shall be filed in accordance with M.R. App. P. 6(c). Unless the Law Court orders otherwise, or a certificate of probable cause issues, no other transcript of any related proceeding shall be prepared pending ruling on the request for a certificate of probable cause. The hearings for which a transcript shall be prepared pursuant to this subdivision are:

(i) For an appeal from a ruling on a motion for correction or reduction of sentence, the hearing, if any, on the motion for correction or reduction of sentence.

(ii) For an appeal from a ruling on a motion for revocation of probation, the hearing on the motion for revocation of probation.

(iii) For an appeal from a ruling on a motion for revocation of supervised release, the hearing on the motion for revocation of supervised release.

(iv) For an appeal from a ruling of inexcusable failure to comply with a court-imposed deferred disposition requirement, the hearing on the motion for termination of the period of deferment or the hearing at the conclusion of the period of deferment.

(v) For an appeal from a ruling on a motion for revocation of administrative release, the hearing on the motion for revocation of administrative release.

(vi) For an appeal from a final judgment in a post-conviction review proceeding, the hearing on the motion for post-conviction relief, if any.

(vii) For an appeal from a final judgment in an extradition proceeding, no transcript as specified by Rule 19(d)(2).

(viii) For an appeal from a ruling on a motion to order DNA analysis, the hearing on the motion to order DNA analysis.



(ix)(A) For an appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of the court records and related criminal justice agency records, the hearing on the post-judgment motion.

(B) For an appeal from an order vacating the earlier order certifying a determination of factual innocence and modifying any record correction earlier made, the hearing relating to the alleged fraud or misrepresentation.

(x) For an appeal from a final judgment on a motion for special restrictions on dissemination and use of criminal history record information, the hearing on the motion.

**(2) Extradition Hearings.**

**(A)** No transcript shall be prepared of any hearing on a petition contesting extradition. In lieu of a transcript of hearing, the justice or judge who heard the petition for extradition shall within ~~10~~ 14 days after the filing of the notice of appeal prepare and forward to the Clerk of the Law Court written findings of fact upon which the determination of the petition contesting extradition was based.

**(B)** Upon a finding that special circumstances exist, which findings shall be in writing and shall detail the substance of such special circumstances and the necessity for the ordering of a transcript, the trial court, in lieu of preparing findings of fact, may order that a transcript of all or part of the proceedings be prepared and transmitted to the Law Court. The preparation and transmission of such a transcript shall be expedited.

**(3) Compensation for Hearing Transcript.** Compensation for the hearing transcript shall be as provided in M.R. App. P. 5(b)(1)(B).

**(e) Denial of a Certificate of Probable Cause.** If the Law Court denies a certificate of probable cause, the Clerk of the Law Court shall forthwith send to each party a written notice of that denial.

**(f) Granting of a Certificate of Probable Cause.** If the Law Court issues a certificate of probable cause authorizing consideration of the appeal on the merits, the Clerk of the Law Court shall forthwith notify the parties and the trial court from which the appeal was taken. For purposes of timing and the applicability of the Maine Rules of Appellate Procedure, the docketing in the Law Court of an order granting a certificate of probable cause shall be treated in the

same manner as the filing of a notice of appeal pursuant to M.R. App. P. 2B(b)(3). If an appeal is pending under M.R. App. P. 2A involving the same criminal judgment, the Rule 19 appeal shall be treated as part of the Rule 2A appeal.

**(g) Additional Transcript Orders.**

**(1)** Within 7 days after the docketing by the Clerk of the Law Court of the order granting the certificate of probable cause, the appellant shall file with the reporter and the Clerk of the Law Court and shall serve on the appellee a transcript order for any other transcripts or portions thereof, not already prepared, that the appellant deems necessary for prosecution of the appeal. Within 7 days after receipt of the appellant's transcript order, the appellee may order additional transcripts or portions thereof in accordance with M.R. App. P. 5(b)(1)(A).

**(2)** Costs of the transcript shall be paid in accordance with M.R. App. P. 5(b)(1)(B).

**(3)** If a non-indigent appellant fails to make appropriate arrangements with the reporter for payment of the transcript within 7 days as provided by M.R. App. P. 5(b)(1)(B), the Clerk of the Law Court shall be notified in accordance with M.R. App. P. 5(b)(1)(B) and the appeal shall proceed without any additional transcripts.

**(h) Clerk's Record.** After docketing of the order granting the certificate of probable cause and notification to the clerk, any further clerk's record shall be filed with the Law Court in the same manner as provided by M.R. App. P. 6.

**(i) Notice of Schedule for Filing Briefs and the Appendix.** Upon filing of the record, including any additional transcripts, the Clerk of the Law Court shall notify the parties of the schedule for filing briefs in accordance with M.R. App. P. 7. The appeal shall then proceed as other appeals under the Maine Rules of Appellate Procedure.

**RETYLING NOTE: January 2017**

Rule 19 was revised, effective July 29, 2016. It is further amended (i) in Rule 19(c) to recognize that sometimes the State may be an appellant; accordingly, the prohibition on filing reply memoranda is extended to any other party to the trial court action; (ii) in Rule 19(d)(2)(A) to allow a judge 14 days from filing of the

notice of appeal to file written findings; and as part of this restyling to add subparagraphs to Rule 19(d)(2) and Rule 19(g).

## **RULE 20. APPEAL OF SENTENCE**

**(a)(1) Application for Leave to Appeal.** An appeal to the Law Court by a defendant for review of sentence shall be as provided in 15 M.R.S. §§ 2151-2157 and these Rules. Any defendant qualified under 15 M.R.S. § 2151 to seek sentence review may apply to the Law Court by filing an application to allow an appeal of sentence with the clerk of the court in which sentence was imposed.

**(2)** The application for review of sentence shall conform to the Judicial Branch form for sentence appeals. The defendant or the defendant's attorney shall sign the application. The clerk of the court in which sentence was imposed shall mail a date-stamped copy of the application to the court reporter. The clerk shall note in the criminal docket the giving of such notification, with the date thereof.

**(3)** When a court imposes a sentence for which a defendant, pursuant to 15 M.R.S. § 2151, is qualified to seek sentence review, the defendant shall be advised of the right to seek sentence review. If an unrepresented defendant requests, the court shall cause an application for review of sentence to be prepared and filed on behalf of the defendant forthwith.

**(b) Time for filing an Application for Leave to Appeal.** The time within which to file an application to allow an appeal of sentence shall be as provided in M.R. App. P. ~~2(b)(2)(A)~~2B(b)(1).

**(c) Docketing the Application in the Law Court.** Upon receipt of the application to allow an appeal of sentence, the clerk of the court in which sentence was imposed shall forthwith transmit to the Law Court the following: a copy of the application with the date of the filing; a copy of the docket entries, the charging instrument, and the order of judgment and commitment; a copy of the M.R.U. Crim. P. 32 pre-sentence report, if any; and a copy of any other material, including documentary exhibits, offered to or considered by the sentencing court in connection with the sentencing proceeding. The case shall be marked "Sentence Appeal," on the docket.

The court in which sentence was imposed shall take no further action pending disposition by the Law Court of the application for review of sentence and, if the application is granted, shall take no further action pending ruling on the

sentence appeal except as provided in M.R. App. P. 3(b), but with the further limitation, as reflected in 15 M.R.S. § 2157, that the court may not stay execution of sentence or set bail.

**(d) Duty of Reporter to Prepare and File Sentencing Transcript.** Unless the Law Court otherwise directs, within 42 days after receipt of the date-stamped copy of the application from the clerk of the court in which sentence was imposed, the court reporter shall file the transcript of the sentencing hearing with the Clerk of the Law Court.

If the court reporter anticipates that the transcript cannot be prepared within the 42-day limit, the court reporter shall file an application for an extension as provided in M.R. App. P. 6(c)(2).

**(e) Correction or Modification of Record.** The court in which sentence was imposed, the Sentence Review Panel of the Supreme Judicial Court, and the Law Court may correct or supplement the record as provided in M.R. App. P. 5(e), except that the Panel and Law Court may, without motion or suggestion, direct that a supplemental record be transmitted by the clerk of the court in which sentence was imposed.

**(f) Denial of Application for Leave to Appeal.** If the Sentence Review Panel of the Supreme Judicial Court denies the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to the clerk of the court in which sentence was imposed and to each counsel of record a written notice of that denial. As provided in 15 M.R.S. § 2152, a denial of the application is final and subject to no further review.

**(g) Docketing Sentence Appeal in Law Court.** If the Sentence Review Panel of the Supreme Judicial Court grants the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to each party and to the clerk of the court in which sentence was imposed a copy of the order granting the application, together with a written notice of the Law Court docket number and the date within which any further record on appeal must be filed.

**(h) Appeal Processing.** The order granting the application to allow an appeal of sentence shall have the same effect for appeal process scheduling as a notice of appeal pursuant to M.R. App. P. ~~2(b)(2)(A)~~2B(b)(1). A sentence appeal in the Law Court after an application for leave to appeal is granted shall proceed in accordance with the Maine Rules of Appellate Procedure, except that any party

desiring transcripts of the proceeding not already in the file shall file a transcript order form within 7 days after notice that leave to appeal has been granted. If an appeal is pending under M.R. App. P. 2A involving the same criminal judgment, the sentence appeal shall be considered as part of that appeal.

**(i) Relief.** If the Law Court, pursuant to 15 M.R.S. § 2156, remands the case to the court in which sentence was imposed for further proceedings and resentencing or solely for resentencing, any justice or judge of that court may act thereon, unless the Law Court otherwise directs.

### **RESTYLING NOTE: January 2017**

Rule 20 was not subject to revision, except for minor editing and citation correction, in the restyling process.

### **RULE 21. CRIMINAL APPEALS BY THE STATE**

**(a) Procedure.** Appeals by the State in criminal cases when authorized by statute shall be subject to the same procedure as that for other appeals, except as provided by this Rule.

**(b) Appeals by the State Requiring Approval of Attorney General.** As to any State-initiated appeal requiring approval of the Attorney General of Maine, the notice of appeal shall be accompanied by the written approval of the Attorney General, which shall become part of the record. The written approval may be filed at a later date, provided that the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted.

**(c) Dismissal of Appeal.** The Law Court shall, on motion, order the dismissal of an appeal brought pursuant to this Rule if it finds that such appeal has not been diligently prosecuted.

**(d) Counsel Fees on Appeal by the State.** When an appeal is taken by the State, the Law Court shall allow the defendant reasonable counsel fees and costs for defense of the appeal.

**(e) Tolling of Appeal Period.** If the State files a motion for findings of fact and conclusions of law pursuant to M.R.U. Crim. P. 41(A)(d), the appeal period shall be tolled during the pendency of the motion. If the motion is granted,

the appeal period shall begin to run once either (i) written findings and conclusions are entered; or (ii) a notation reflecting that no findings and conclusions have been made is entered on the criminal docket.

### **RESTYLING NOTE: January 2017**

Rule 21 was not subject to substantive editing or clarification in the restyling process.

## **RULE 22. REVIEW OF RULINGS AND ORDERS OF THE PUBLIC UTILITIES COMMISSION**

(a)(1) Review of rulings and orders of the Public Utilities Commission, including applications for relief pending final determination, shall be governed by these Rules.

(2) Whenever a statute or rule regulating the taking of an appeal from a judgment of the trial court in civil actions uses the term “the court,” “the clerk,” or a similar term, they shall for the purpose of a proceeding governed by this Rule be read, respectively, as “the commission,” “the secretary of the commission,” or other appropriate terms.

(b) On an appeal from the Public Utilities Commission to the Law Court, the appellant shall pay the filing fee by check, payable to the Clerk of the Law Court, to the secretary of the commission when filing the notice of appeal, and the secretary of the commission shall transmit that check representing the filing fee to the Clerk of the Law Court along with the certified copy of the notice of appeal pursuant to Rule 3(a).

### **RESTYLING NOTE: January 2017**

Rule 22 is subject to minor editing for internal numbering in the restyling process. It includes no substantive changes. The new Rule 6(d) regarding electronic or digital record filing practice will apply to many Rule 22 appeals to the Law Court.

## RULE 23. REVIEW OF DECISIONS OF THE WORKERS' COMPENSATION BOARD AND APPELLATE DIVISION

### (a) When and How Taken.

**(1)** A party in interest may seek review by the Law Court of a decision of the Workers' Compensation Board or its Appellate Division by filing with the Clerk of the Law Court a copy of the decision within 20 days after receipt of notice of the filing of the decision by the Appellate Division or the Board. The petitionerparty petitioning for appeal shall file with the copy of the decision a notice of appeal indicating the points intended to be addressed on appeal.

**(2)** The party shall also pay to the Clerk of the Law Court the required filing fee.

**(3)** Within the original 20 days after receipt of notice or within 14 days after the date of the first filing of a notice of appeal with the Clerk of the Law Court, any other party in interest may file a notice of appeal indicating any other additional point theythat the other party may wish to address in an appeal.

**(4)** When more than one party files a notice of appeal, the party who files the first notice of appeal shall be deemed to be the petitioner for purposes of application of this Rule.

### (b) Petition for Appellate Review and Response.

#### (1) Form of Petition.

**(A)** Within 20 days of the filing of the decision or the last filed, timely notice of appeal, the petitioner shall file with the Clerk of the Law Court 10 copies of a petition for appellate review, which shall state ~~in no more than 10 pages~~ the procedural and factual history of the case, the error alleged to have been committed, and the manner in which the petition meets the criteria for granting appellate review stated in paragraph (2).

**(B)** The petition for appellate review and any response shall be typed in at least ~~12~~14-point font with double spacing between each line of type except for block quotations. ~~Both the~~ The petition and any response filed by any other party shall be in a single document not exceeding 10 pages.

**(2) Review Criteria.** The Law Court may grant a petition for appellate review when:

**(A)** The case clearly raises an important question of law that should be addressed because (i) the question of law is one that is likely to recur unless resolved, or (ii) there is a need to consider establishing, implementing, or changing an interpretation of law; or

**(B)** The decision on appeal contains a substantial error on a question of law resulting in substantial prejudice to one or more of the parties to the Board proceeding; or

**(C)** The decision on an appeal is based on a substantial and prejudicial violation of the statutory or due process procedural rights of one or more of the parties to the Board proceeding.

**(3) No Appeal of Fact-Finding.** As provided by statute, there shall be no appeal upon findings of fact.

**(4) Petition Attachments.** There shall be appended to the petition for appellate review, a copy of the decision of the Appellate Division or Workers' Compensation Board, and copies of any other relevant decisions of the Board, the Appellate Division, or the former Workers' Compensation Commission that are necessary to evaluate the issues raised in the petition. Failure to attach to a petition for appellate review a copy of the challenged decision of the Appellate Division or the Workers' Compensation Board may result in a summary dismissal of that petition.

**(5) Response.** Within 14 days any other party in interest may file with the Clerk of the Law Court 10 copies of a response to the petition for appellate review. The response may not exceed 10 pages.

**(6) Service of Copies.** At the time of filing of a petition for appellate review or the response thereto, the party filing the petition or response shall also file one copy with the General Counsel of the Workers' Compensation Board and serve one copy on each of the other parties in interest.

**(c) Granting or Denying the Petition for Appellate Review.** The petition for appellate review shall be granted or denied as provided in 39-A M.R.S. § 322(3). If the petition is granted, the order granting the petition shall be treated



as the notice of appeal, the first petitioner shall be treated as the appellant, and the appeal shall proceed in accordance with these Rules as applicable to an appeal in a civil action; except that:

**(1)** In cases when the legal error is apparent on the face of the decision of the Appellate Division or the Board, the Law Court may summarily modify or vacate the decision and remand to the Board for further proceedings.

**(2)** When the appeal is from a decision of the Appellate Division of the Workers' Compensation Board issued pursuant to 39-A M.R.S. § 321-B:

**(A)** The appellant shall prepare the record on appeal and file the record with the Clerk of the Law Court within 35 days after the date the petition is granted;

**(B)** The appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days after the filing of the record on appeal with the Clerk of the Law Court;

**(C)** Either party may file a reply brief within 14 days after service of the brief of the other party;

**(D)** The record on appeal shall consist of the Appellate Division's docket sheet, the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer or the Appellate Division has taken judicial notice, a copy of the decision of the Appellate Division, and a copy of the decision and findings of the hearing officer.

**(3)** When the appeal is from a decision of the Workers' Compensation Board issued pursuant to 39-A M.R.S. § 320:

**(A)** The Executive Director of the Workers' Compensation Board shall file the record on appeal with the Clerk of the Law Court within 14 days after the date the petition is granted;

**(B)** The appellant shall file the appendix to the briefs and both of the parties shall file their briefs within 14 days after the petition is granted;

**(C)** Either party may file a reply brief within 14 days after service of the brief of the other party;

(D) The record on appeal shall consist of the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer has taken judicial notice, and copies of the decision and findings of the hearing officer and the decision of the Board.

(4) If after granting a petition for appellate review and after consideration of the briefs and any oral argument, the Law Court is of the opinion that the criteria stated in paragraph (b)(2) have not been met and that the petition was improvidently granted, the Law Court may dismiss the appeal.

**~~{Transition Provision  
2012 Me. Rules 13(2)}~~**

~~—These amendments shall be effective and shall govern appeals from hearing officer, Appellate Division, or Workers' Compensation Board decisions published on and after September 1, 2012. Final decisions published before September 1, 2012, and not subject to post-decision motions pending on or filed after September 1, 2012, may be appealed pursuant to these Rules as in effect before September 1, 2012.~~

**RETYLING NOTE: January 2017**

Rule 23 is subject to editing for clarification and additional internal separation and numbering in the restyling process. It includes no substantive changes. The 20 day period for filing appeals in Rule 23 is set by statute, 39-A M.R.S. § 322(1). Therefore, it is not changed to a time period measured in weekly increments, as is the practice with time limits in the Rules not controlled by statute. The transition provision adopted when the Appellate Division was created in 2012 is eliminated.

## RULE 24. REPORT OF CASES

**(a) Report by Agreement of Important or Doubtful Questions.** When the trial court is of the opinion that a question of law presented to it is of sufficient importance or doubt to justify a report to the Law Court for determination, it may so report when:

- (1) all parties appearing agree to the report;
- (2) there is agreement as to all facts material to the appeal; and,
- (3) the decision thereon would, in at least one alternative, finally dispose of the action.

**(b) ~~[Reserved] Report on Agreed Facts.~~** ~~The court may, upon request of all parties appearing, report any action in the trial court to the Law Court for determination where there is agreement as to all material facts, if the trial court is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report.~~

**(c) Report of Interlocutory Rulings.** If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

**(d) Determination by the Law Court.** Any action reported underpursuant to this Rule shall be entered in the Law Court and ~~heard and determined in the manner provided in case of appeals~~ proceed as any other appeal, with the plaintiff or the party aggrieved by a reported interlocutory ruling being treated as the appellant. In a civil case, the appellant shall pay the fee for filing of a notice of appeal promptly following entry of the order of report.

### RETYLING NOTE: January 2017

In current Rule 24 regarding report of cases, Rule 24(a) and (b) are essentially duplicative. Rule 24(a) purports to address important or doubtful questions of law; Rule 24(b) purports to address issues of law relating to agreed facts. However, both address reports of what were essentially questions of law. In the restyling, Rule 24(a) is reorganized, without substantive change, and the duplication in Rule 24(b) is eliminated. Rule 24(c) addresses reports when parties

may not be in agreement on the report. When facts are not in dispute, the matter can be submitted to the Law Court on report, assuming it otherwise qualifies for consideration. If there are any material facts in dispute, the matter cannot be referred to the Law Court until the factual disputes have been resolved by a final judgment in the trial court.

## **RULE 25. CERTIFICATION OF QUESTIONS OF LAW BY FEDERAL COURTS TO THE LAW COURT**

**(a) When Certified.** When it shall appear to the Supreme Court of the United States or to any of the Courts of Appeals or District Courts of the United States that there are involved in any proceeding before it one or more questions of law of this State that may be determinative of the cause and that there is no clear controlling precedent in the decisions of the Supreme Judicial Court, such federal court may, upon its own motion or upon request of any interested party, certify such questions of law of this State to the Supreme Judicial Court sitting as the Law Court, for instructions concerning such questions of state law.

**(b) Contents of Certificate.** The certificate provided for herein shall contain the stylename and docket number of the case, a statement of facts showing the nature of the case and the circumstances out of which the question of law arises, and the question or questions of law to be answered. Subject to other direction by the Supreme Judicial Court, the certificate shall also specify which party shall be treated as the appellant in the proceedings before the Supreme Judicial Court.

**(c) Preparation of Certificate.** The certificate may be prepared by stipulation or as directed by the certifying federal court. When prepared and signed by the presiding judge of the federal court, 12 copies thereof shall be certified to the Supreme Judicial Court by the clerk of the federal court and under its official seal. The Supreme Judicial Court may, in its discretion, require the original or copies of all or any portion of the record before the federal court to be filed with said certificate where, in its opinion, such record may be necessary in answering any certified question of law.

**(d) Costs of Certificate.** The costs of the certificate and filing fee shall be equally divided among the parties unless otherwise ordered by the Supreme Judicial Court.

(e) **Hearing Before the Law Court.** For the purpose of measuring the time for filing briefs and for holding the oral argument, the filing and docketing of the certificate in the Supreme Judicial Court shall be treated the same as the filing and docketing of the record on an appeal from the trial court pursuant to Rule 7. ~~The hearing shall be by the briefs and oral argument, both of which shall be controlled by the same rules as briefs and oral argument on appeals. From the filing and docketing of the certificate, the matter shall proceed as any other appeal pursuant to these Rules.~~

(f) **Intervention by the State.** When the constitutionality of an act of the Legislature of this State affecting the public interest is drawn in question upon such certification to which the State of Maine or an officer, agency, or employee thereof is not a party, the Supreme Judicial Court shall notify the Attorney General and shall permit the State of Maine to intervene for presentation of briefs and oral argument on the question of constitutionality.

**RETYLING NOTE: January 2017**

Rule 25 is subject to minor editing for clarification in the restyling process. It includes no substantive changes.

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