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THE MAINE RULES OF APPELLATE PROCEDURE

WITH ADVISORY NOTES
(Underlined words hyperlink to the indicated Rule when viewed in Word format.)

II. SPECIAL APPEAL PROCEEDINGS

THE MAINE RULES OF APPELLATE PROCEDURE WITH ADVISORY NOTES

RULE 1. SCOPE OF RULES

These rules govern the procedure for review of any judgment, order or ruling by the District Court or the Superior Court or the Probate Courts, or a single justice of the Supreme Judicial Court, 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 shall apply to all appeals in which the notice of appeal is filed on or after January 1, 2001.

RULE 1
Advisory Notes – January 1, 2001

The Maine Rules of Appellate Procedure are adopted to apply to all appeals from the trial courts to the Law Court in which the notice of appeal is filed on or after January 1, 2001. This is the effective date of court unification amendments that eliminate most appeals from the District Court to the Superior Court and allow for direct appeal from the District Court to the Law Court of most District Court criminal and civil decisions. For appeals filed on and after January 1, 2001, these rules replace Rules 72, 73, 74, 74A, 74B, 74C, 75, 75A, 75B, 75C, 75D, 76, 76A, 76B and 76I of the Maine Rules of Civil Procedure, and Rules 37, 37A, 37B, 39, 39A, 39B, 39C, 39D, 40B, 40C, 78 and 90 of the Maine Rules of Criminal Procedure, and Rules 72, 73, 74, 74A, 74B, 74C, 75, 75A, 75B, 75C, 75D, 76 and 76A of the Maine Rules of Probate Procedure.

Adoption of a single Maine Rules of Appellate Procedure is necessary because, although the appeal rules in the Maine Rules of Civil Procedure[1] and the Maine Rules of Criminal Procedure are similar in substance on most significant matters, they include significant timing and process differences that could create considerable confusion for many clerk's offices, the Bar, and the public attempting to apply the differing sets of rules, for the first time, in many appeals from District Court.

The present rules governing appeals, listed above, shall continue in effect for appeals to the Law Court filed on or before December 31, 2000. Each of those rules is being amended to include a clause limiting its application to such appeals. Further, as all appeals should be fully processed pursuant to the present rules within one year, the above listed rules will be abrogated effective December 31, 2001. These amended rules provide a uniform procedure for all appeals, criminal and civil, from the trial courts to the Law Court.

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[1] The Maine Rules of Probate Procedure incorporate the Maine Rules of Civil Procedure appeal rules.

RULE 2. FILING OF APPEAL

(a) Notice of Appeal.

(1) Review of a judgment, order or ruling of the District Court or the Superior Court, 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. The appeal shall be commenced by filing a notice of appeal with the clerk of the court from which the appeal is taken, along with any required filing fee or a request to have the fee waived pursuant to M.R. Civ. P. 91. 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 notice of appeal and transcript order shall be signed by the appellant or the appellant's attorney. If a notice is not signed, or if no fee is paid or waived for appeals in which a fee is required, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the clerk shall return all documents to the party who filed them.

(2) The notice of appeal shall specify the party taking the appeal and shall designate the judgment or part thereof appealed from. In a civil case the notice of appeal shall include or be filed with a statement of the issues on appeal required by Rule 5(b)(2)(A).

(3) In a criminal case, when a court imposes any sentence on a defendant after trial, or 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 of the right to appeal. If a criminal defendant not represented by counsel requests, the court shall cause a notice of appeal to be prepared and filed on behalf of the defendant forthwith.

(4) 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). 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 the attorney for the defendant.

(5) The 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, but the clerk's failure to do so does not affect the validity of the appeal. This notification is sufficient notwithstanding the death of

the party or of the party's attorney prior to the giving of the notification. In any action under the Maine Tort Claims Act, 14 M.R.S. §§ 8101 et seq., a copy of any notice of appeal that is filed shall be mailed by the clerk to the Attorney General at the same time as that notice is mailed to the parties to the action. The clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing.

(b) Time for Appeal.

(1) *Time of Entry of Judgment.* A judgment or order is entered within the meaning of this rule when it is entered in 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 day of entry on the docket.

(2)(A) *Criminal Cases.* Except for an appeal from an order making a final disposition on a petition contesting extradition, the time within which an appeal may be taken in a criminal case shall be 21 days after entry of the judgment or order appealed from unless a shorter time is provided by law. If a timely motion for arrest of judgment, for judgment of acquittal after verdict, for a new trial or for correction or reduction of sentence under M.R.U. Crim. P. 35(a) or 35(c) is made within 21 days after entry of judgment, an appeal may be taken within 21 days after entry of the order granting or denying the motion.

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

(3) *Civil Cases.* The time within which an appeal may be taken in a civil case shall be 21 days after entry of the judgment or order appealed from unless a shorter time is provided by law. 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 of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated by a motion made pursuant to any of the following rules and filed within the time required for filing the motion, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of an order making findings of fact or conclusions of law as requested under M.R. Civ. P. 52(a), or denying a motion for a new trial under M.R. Civ. P. 59, or granting or denying: (i) a motion for judgment under M.R. Civ. P. 50(b); (ii) a motion under M.R. Civ. P. 52(b) to amend or make additional findings of fact,

whether or not an alteration of the judgment would be required if the motion is granted; (iii) a motion under M.R. Civ. P. 59 to alter or amend the judgment including a motion for reconsideration of the judgment; (iv) a timely motion for reopening or reconsideration brought before the Public Utilities Commission pursuant to its rules of practice.

(4) *Issues Preserved.* An appeal from a judgment, whenever taken, preserves for review any claim of error in the record including any claim of error in any of the orders specified in subdivisions (b)(2) and (b)(3) hereof, even if entered on a motion filed after the notice of appeal. The filing of a motion for any such order does not waive or otherwise render ineffective a previously filed, timely notice of appeal from the same judgment. Time periods for taking any further steps to secure review of the judgment appealed from shall be measured from the date of the entry of such an order on a timely motion. An appeal shall not be dismissed because it is designated as being taken from such an order, but shall be treated as an appeal from the judgment.

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

(A) Upon a showing of good cause, the 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 this subdivision;

(B) 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 this subdivision may be granted by the court on a motion with notice only upon a showing that (i) the 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.

(c) Civil Cases: Bonds and Multiple Appeals. In civil cases:

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

(2) *Joint or Consolidated Appeals.* If two or more persons are entitled to appeal from a 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.

(3) *Cross-Appeals.* 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, except that 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.

RULE 2
Advisory Notes – January 1, 2001

Rule 2(a)(1) is based on provisions of M.R. Civ. P. 73(a) & (b) and M.R. Crim. P. 37(a) & (b). It provides in essence that review of any judgment, order, or ruling of the trial courts shall be by appeal to the Law Court where that judgment, order, or ruling is by law reviewable by the Law Court. The appeal must be commenced by filing a notice of appeal with the clerk of the court from which the appeal is taken. Accompanying the notice of appeal must be a transcript order form for those portions of the transcript that the appellant intends to include in the record on appeal. The notice of appeal and transcript order form must be signed by the appellant or the appellant's attorney.

Rule 2(a)(2) is based on a portion of M.R. Civ. P. 73(b). It continues the present requirement that the notice of appeal specify the parties taking the appeal

and designate the judgment or other court order from which the appeal is being taken. This specific requirement is now extended to criminal cases.

Rule 2(a)(3) & (4) involve special provisions for criminal appeals, derived from the last paragraph of M.R. Crim. P. 37(b) and the last paragraph of M.R. Crim. P. 37(c).

Paragraph (3) adopts the present requirement of M.R. Crim. P. 37(c) that, upon imposing any sentence after trial, or after a plea to murder or a Class A, B or C crime which involves a sentence that was not agreed to by the defendant, the court must advise the defendant of the rights of appeal of both the underlying conviction and the sentence. The sentence appeal advice must be given only if the sentence involves a term of imprisonment, either underlying or imposed, of more than one year. *See* 15 M.R.S.A. § 2151.

Where a criminal defendant is not represented by counsel and requests that a notice of appeal be filed, the court clerk is to prepare and file a notice of appeal on behalf of the defendant. The requirement imposed on the clerk is necessarily limited to the notice of appeal, as the clerk would have no basis to make any determination regarding the appropriate nature of any transcript to be ordered with a transcript order form.

Paragraph (4) of the rule reflects the statutory requirement of 15 M.R.S.A. § 2115-A(5) that any appeals by the State in criminal cases, except post-conviction case appeals, must be approved, in writing, by the Attorney General. The approval must be filed with the clerk of the trial court and noted on the docket. A copy must be mailed by the clerk to the attorney for the defendant, or, if the defendant is unrepresented, directly to the defendant.

Rule 2(a)(5) is based on a portion of M.R. Civ. P. 73(b) and M.R. Crim. P. 37(b). It requires that, once the notice of appeal is filed, the clerk must date stamp it and mail a copy of the notice of appeal and transcript order form to the Clerk of the Law Court, the court reporter or Electronic Recording Division, and the attorney of record for each party to the appeal other than the appellant. Where a party is not represented by an attorney, the clerk fulfills the duty of sending a notice of appeal to that party by sending the notice to the last known address of the party appearing in the court file. In cases arising under the Maine Tort Claims Act, the clerk must send a copy of the notice of appeal to the Attorney General at the same time that the clerk sends copies of the notice of appeal to other parties in the action.

Subdivision 5 also recognizes that a clerk's failure to send a notice of appeal, required by this section, does not affect the validity of the appeal. Notice to a party is sufficient when mailed by the clerk regardless of the death of the party or the party's attorney prior to sending of the notice. The clerk is to note in the docket the names of the parties to whom copies of the notice of appeal were mailed and the date of mailing.

Rule 2(b)(1) states that the date a judgment is deemed to be entered for purposes of this rule and for calculating the time periods for filing an appeal, is the date on which the judgment is entered in the docket. If the date appearing on the judgment is different from the date of docketing, the date of docketing controls. This reflects current requirements as stated in M.R. Civ. P. 58 and M.R. Crim. P. 37(c).

A notice of appeal filed at an earlier time, after a verdict or an order or other action of the court, but before entry of that judgment or other order in the docket, is treated as filed on the day of entry into the docket.

Rule 2(b)(2) governs the time for filing appeals in criminal cases. The notice of appeal must be filed within 20 days after entry of the judgment or order appealed from in the docket unless a shorter time is provided by law. *See* 15 M.R.S.A. § 2115 (Supp. 1999).[2] The rule reflects current M.R. Crim. P. 37(c) in providing a list of exceptions that allow delay of filing of the notice of appeal until 20 days after entry of a ruling on the listed motions, provided that the motion at issue is itself filed within 20 days after entry of judgment. The deadline for filing a notice of appeal is not stayed unless one of the specifically listed motions is filed within 20 days after entry of judgment.

Rule 2(b)(3) governs the time for filing notices of appeal in civil cases. This rule is based on M.R. Civ. P. 73(a). Notice of appeal must be filed within 30 days

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[2] Title 15 M.R.S.A. § 2115 states in part:

> **§ 2115. Appeals from the Superior Court**
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> In any criminal proceeding in the Superior Court, any defendant aggrieved by a judgment of conviction, ruling or order may appeal to the Supreme Judicial Court, sitting as the Law Court. The time for taking the appeal and the manner and any conditions for the taking of the appeal shall be as the Supreme Judicial Court provides by rule.

after entry of the judgment or order appealed from except where a shorter time is provided by law. *See* 14 M.R.S.A. § 1851.[3]

If one party to a civil case files a timely notice of appeal, any other party to the case may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within 30 days after entry of judgment, whichever time expires last. As with the criminal rules, the time for filing an appeal is stayed by one of the listed motions if the motion itself is filed within the time specified for filing the motion. Where such a motion is filed, the time for filing appeal begins to run from entry of the order ruling on the listed motions. Thus, if a specific enumerated motion is filed within the time required for filing the motion, or within the appeal period if no time period is set for the motion, the time for filing an appeal is extended to 30 days after an order ruling on the indicated motion.

Rule 2(b)(4) states that an appeal taken from a judgment including an appeal taken after entry of an order on a post-judgment motion as addressed in 2(b)(2) and 2(b)(3) allows review of any properly preserved claim of error in the original record or any orders entered based on post-judgment motions. The rule also clarifies that filing of motions and entry of subsequent orders does not render a previously filed notice of appeal ineffective. Appeals designated as being taken from orders on post-judgment motions are treated as appeals from the judgment itself. This provision is based on similar language in M.R. Civ. P. 73(a) and M.R. Crim. P. 37(c).

Rule 2(b)(5) is derived from M.R. Civ. P. 73(a) and M.R. Crim. P. 37(c). It allows the court, on a showing of excusable neglect, before or after a particular appeal deadline has expired, to extend the time for filing a notice of appeal otherwise allowed for a period not to exceed 21 days from the expiration of the original time prescribed in this rule, 20 days for criminal appeals and 30 days for civil appeals. *The 21-day additional period is a change from current rules which allow an additional 30 days in both criminal and civil cases.*

Rule 2(c) adopts provisions that are carryovers from the present appeal rules without any significant change in language. Rule 2(c)(1) carries over present Rule 73(c). Rule 2(c)(2) carries over present M.R. Civ. P. 73(d), and Rule 2(c)(3) carries over present M.R. Civ. P. 73(e). The provisions of 2(c) are only applicable

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[3] The last sentence of 14 M.R.S.A. § 1851 states:

> "In any civil case any party aggrieved by any judgment, ruling or order may appeal therefrom to the law court within 30 days or such further time as may be granted by the court pursuant to a rule of court."

to civil cases. Note that bail for criminal appeals is governed by M.R. Crim. P. 46 which is not affected by these amendments.

Advisory Notes – September 10, 2001

The Rule 2, subdivision (a), paragraph (2) amendment adds a cross-reference to the statement of issues requirement of M.R. App. P. 5(b)(2)(A) which must be included with civil notices of appeal.

The amendments to Rule 2(b), based on the recommendation of the Court Unification Implementation Committee, and authorized by P.L. 2001, ch. 17, create a uniform appeal filing deadline of 21 days after entry in the docket of the judgment or order appealed from, unless a different time is explicitly provided by law. This change adds one day to the present 20-day limit for filing criminal appeals, and reduces by nine days the present 30-day limit for filing civil appeals. The amendments are intended to further the intent of the original CUTAF legislation to improve appeal processing times. The changed dates apply to appeals of judgments or orders entered on and after January 1, 2002.

The amendment to subdivision (c), paragraph (3), clarifies the Court reference in the rule.

Advisory Notes – October 15, 2001

Rule 2(b)(2) is amended to recognize 15 M.R.S.A. § 210-A(2) which requires that any appeals from orders entered in extradition proceedings be filed within ten (10) days of entry of the order appealed from. This amendment is necessary in light of the addition to the Maine Rules of Appellate Procedure of rules governing discretionary appeals including appeals of extradition orders which are being moved from the Maine Rules of Criminal Procedure into Rule 19 of the Maine Rules of Appellate Procedure.

Advisory Notes – July 2003

This amendment to M.R. App. P. 2(b)(2)(B) recognizes the change in the time limit for filing an extradition appeal adopted by P.L. 2003, ch. 17, §§ 1 & 2, enacting 15 M.R.S.A. § 210-B, setting the time limit for filing an appeal at 7 days after entry of order. The prior law specified a 10-day time period.

Advisory Notes – January 2004

This amendment to M.R. App. P. 2(b)(5) establishes two time periods within which a party may seek an extension of time to file an appeal. Subparagraph (A) allows the court to extend the time period for filing an appeal for up to 21 days from the expiration of the original time limit for filing an appeal–usually 21 days from entry of judgment–upon a showing of good cause. This is the time period for an extension of time specified in the current rule.

Subparagraph B allows the court to extend the time period for filing an appeal for up to 140 days (20 weeks) from the expiration of the original time limit for filing an appeal–usually 21 days from entry of judgment–upon a showing of the three criteria indicated in subparagraph B. The extension of time provisions in subparagraphs A and B are in the alternative and are not cumulative. Both start running from the expiration of the original time limit for filing an appeal.

The purpose of this amendment to M.R. App. P. 2(b)(5) is to provide greater flexibility to courts to extend time for filing a notice of appeal, particularly in instances where the clerk has not sent a copy of the judgment to the parties or otherwise notified the parties that judgment has been entered. To accomplish this objective, two changes are adopted. First, the standard for review for requests to extend time in paragraph A is changed from "excusable neglect" to "good cause." The good cause standard is viewed as one which is more lenient than the excusable neglect standard. *See* MOORE'S FEDERAL PRACTICE (3d. 2002), section 304.14[2][a] (excusable neglect) and [b] (good cause). It is the same standard that is applied in M.R. Civ. P. 55(c) for setting aside defaults.

Second, the rule change in subparagraph B allows an extension of the time to file a notice of appeal exceeding 21 days, but not exceeding 140 days, from the expiration of the original time for filing an appeal, for those cases where the moving party demonstrates that the clerk failed to send notice of entry of judgment to the parties. The moving party is also required to demonstrate that they did not otherwise learn of the entry of judgment and that any other party will not be unfairly prejudiced by the requested extension of time. This amendment gives the court some flexibility to mitigate the potentially harsh affects of a failure to notify parties of entry of a judgment which, under appellate practice, was not allowed to be considered in evaluating a motion to extend time. *Bourke v. City of S. Portland*, 2002 ME 155, 806 A.2d 1255; *Harris Baking Co. v. Mazzeo*, 294 A.2d 445, 451 (Me. 1972). These changes, however, recognize the importance of the finality of judgments. A time extension would be barred if the moving party had otherwise

learned of the entry of the judgment or if any party would be unfairly prejudiced by allowing the after the deadline appeal. Notably, claims of lack of receipt of notice would be insufficient to justify an extension of time under this rule amendment. Some failure of action in a clerk's office must be demonstrated. The Committee recognizes that claims of lack of receipt of notice may be a frequent excuse for sloppy record keeping, poor office management, inattentive litigation practices or failures to keep a court and litigants aware of changes in addresses. It should also be noted that the exception relating to the failure of the clerk to send notice would only be generated in cases where the clerk was obligated to send notice of entry of judgments. This exception would not be generated, therefore, in situations such as entry of default judgments, where the clerk may have no obligation to send a copy of the judgment to a litigant who has failed to appear or otherwise plead in a matter.

Advisory Note – November 2011

Rule 2(c)(3) is clarified to indicate that, unless the parties agree or it is ordered otherwise, the first party to file a notice of appeal is the "appellant" and all others are "appellees." The former rule referred to "both" parties, leaving uncertainty as to how to interpret the rule when there were more than two parties in the case. The rule is also amended to indicate that if both parents appeal from an order impacting both parents' parental rights in a child protection, guardianship, or grandparents' visitation proceeding, both parents are treated as appellants, unless otherwise ordered.

Advisory Note – July 2012

Rule 2(a)(1) and (4) and Rule 2(b)(3) are amended to make clear the need for payment of the filing fee in those appeals for which a filing fee is required. This requirement is also discussed in M.R. Civ. P. 5(f).

Advisory Note – October 2012

The amendment [to Rule 2(a)(5)] is a technical change to recognize the new title for what is now called the Office of Transcript Production.

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and

citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

All references to the Maine Revised Statutes Annotated in the Maine Rules of Appellate Procedure are updated to refer to the Maine Revised Statutes.

RULE 3. DOCKETING THE APPEAL

(a) Law Court Docket. Upon receipt of the 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. 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. The trial court shall take no further action pending disposition of the appeal by the Law Court except: (1) in criminal cases, the appointment of counsel for an indigent defendant; the granting of stay of execution and the fixing or revocation of bail pending appeal; and 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) in civil cases as provided in M.R. Civ. P. 27(b), 54(b)(3), 60(a), 62(a), 62(c), and 62(d), and in Rule 5(e) of these Rules; (3) in child protective cases, to continue case review and processing as required by law; and (4) as is otherwise necessary in connection with the prosecution of the appeal and to dispose of any timely motion made pursuant to one of the rules enumerated in Rule 2(b)(2) & (3). The preceding sentence shall not apply unless the Law Court so orders, to 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 that does not resolve all pending claims.

RULE 3
Advisory Notes – January 1, 2001

Rule 3(a) governs docketing of appeals in the Law Court. It is derived from M.R. Civ. P. 73(f) and M.R. Crim. P. 37(d). Upon receipt of a notice of appeal, the trial court clerk must docket the appeal and then transmit a copy of the notice plus

a copy of all present docket entries to the Clerk of the Law Court. The case will also be marked "Law" on the docket of the trial court. Separately, it should be noted that pursuant to Rule 2(a)(5) the clerk must also send a copy of any transcript order form required to be filed with the notice of appeal to the Clerk of the Law Court. Upon receipt of the copies of the notice of appeal and the docket entries, the Clerk of the Law Court must docket the appeal and then 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 reporter's transcript must be filed.

Rule 3(b) reflects current practice as stated in M.R. Civ. P. 73(f) and M.R. Crim. P. 37(d) that, once the appeal is docketed by the marking of "Law" on the trial court docket, generally trial courts should take no further action in the matter pending disposition of the appeal by the Law Court. There are certain stated exceptions to this rule for both criminal and civil cases, and those exceptions are outlined in subparagraphs 1, 2, 3, and 4 of Rule 3(b). Subparagraph 1 applies to criminal cases. Subparagraph 2 applies to civil cases. Subparagraph 3 applies to child protective cases and recognizes the statutory requirements that processing of these cases continue while appeals are pending. Subparagraph 4 applies to all cases. The last sentence of the Rule separately excepts from application of the "no further action" rule, appeals from orders listed in the sentence.

Advisory Note – July 2012

Rule 3(a) is amended to make clear the need for payment of the filing fee in those cases where a filing fee is required. This requirement is also discussed in M.R. App. P. 2(a)(1) and (4), M.R. App. P. 2(b)(3), and M.R. Civ. P. 5(f).

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

RULE 4. DISMISSAL OF 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 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 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.

RULE 4
Advisory Notes – January 1, 2001

Rule 4(a) generally adopts M.R. Crim. P. 37(e)(1), but with amendment to set a cutoff date for dismissals as the date on or after the date for oral argument or on briefs consideration.

Rule 4(b) generally adopts M.R. Civ. P. 73(g)(1). Under both the voluntary dismissal in criminal appeals and the stipulation of dismissal that may apply to either criminal or civil appeals, after an appeal is conferenced by the Law Court, it may be dismissed only with leave of the Law Court. The current rules limit dismissal after argument, but that limitation is changed to on or after the date set for argument or on briefs consideration.

Rule 4(c) adopts the nearly identical provisions of M.R. Civ. P. 73(g)(2) and M.R. Crim. P. 37(e)(2) allowing dismissal on motion or by the Law Court's own action for want of prosecution where an appellant fails to comply with the requirements of these Rules and within the time prescribed by the Rules. The basis for dismissal for want of prosecution may include not only failure to meet specific time limits, but also failure to comply with other obligations relating to an appeal such as filing the requisite transcript order form, if a transcript is to be ordered, or filing a proper brief or appendix as is required by these Rules.

Advisory Notes – September 10, 2001

This language [Rule 4(d)] is virtually identical to the provisions of M.R. Civ. P. 12(h)(3) which previously governed civil appeals. It is added at this point to recognize the Court's inherent authority to dismiss matters when it is apparent that it lacks subject matter jurisdiction. *See Thomas v. City of South Portland*, 2001 ME 50, 768 A.2d 595. The only difference between the proposed rule and Rule 12(h)(3) is a change of the last word from "action" to "appeal."

Advisory Note – July 2012

Rule 4 is internally numbered and amended to place all provisions for voluntary or stipulated dismissal of appeals within subdivision (a) and to move the submission deadline for voluntary dismissals without Law Court approval to subdivision (b). There is no change to the process for voluntary dismissal of criminal appeals in paragraph (1).

Rule 4(a)(2) is adopted to clarify the process for unilateral or voluntary dismissal of civil appeals. To avoid the risk that an appellee may be required to expend any significant time or effort only to have an appeal voluntarily dismissed, a civil appeal may be voluntarily dismissed only on or before the date that the appellant's brief is filed or is due to be filed, whichever is earlier. The appeal may be dismissed 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 (3) (formerly subdivision (b)).

As with current practice, an appeal my be dismissed only with leave of the Law Court on or after the date the appeal is scheduled to be considered at oral argument or on briefs. To clarify that this is a general rule that applies to all dismissals by parties, the provision is placed in a new subdivision (b).

Rule 4(d) is amended to clarify that it is applicable to issues of lack of subject matter jurisdiction before the Law Court. The Law Court continues to have the capacity to take appropriate action when it notices, in a matter before it, that any other court or tribunal lacked personal or subject matter jurisdiction over a party or matter before the Law Court.

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. As used in these rules, the term "reporter" means a court reporter, the Office of Transcript Production, or a transcriber of an electronically recorded record.

(b)(1) *Transcript: Criminal Cases.* Except as otherwise designated, the standard transcript on appeal shall include the testimony of the witnesses at trial, any bench conferences and the charge to the jury.

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 of 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 the transcript order shall be filed with the Clerk of the Law Court and served on appellant's counsel.

In the case of an indigent appellant, the cost of the transcript shall be paid by the Maine Commission on Indigent Legal Services. A nonindigent appellant shall make satisfactory financial arrangements with the court reporter or Office of Transcript Production within 7 days after filing the notice of appeal.

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) *Transcript: Civil Cases.*

(A) 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 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. 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 of the appellant, file with the Clerk of the Law Court and serve on the appellant a designation of additional parts 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 seven days either order the parts or move in the Law Court for an order requiring the appellant to do so.

(B) Within 7 days of 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 of 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.

(c) Condensed Transcript. The party initially ordering the transcript or a part thereof in a criminal or a civil case may elect to order a transcript in any available format. 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. 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, 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. 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. 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.

RULE 5
Advisory Notes – January 1, 2001

Rule 5(a) adopts contents of record provisions following current practice under M.R. Civ. P. 74(a) and M.R. Crim. P. 39(a). The contents of the record addressed means the original court file, the exhibits filed in the trial court, the transcript of any proceedings that have been transcribed and a copy of the docket entries. The rule also specifies that whenever the term "reporter" is used in the rules, it refers to a court reporter or an electronically recorded record. Subdivision (a) essentially defines the record on appeal. However, all portions of the record need not necessarily be transmitted to the Law Court. What must be transmitted to the Law Court is separately governed by Rule 6.

Rule 5(b)(1) addresses the appeal transcript in criminal cases. It follows very closely M.R. Crim. P. 39(b) but extends from 5 days to 7 days the time within which an appellee must designate and order additional portions of the transcript beyond that designated by the appellant or beyond the standard transcript. Because the record and transcript in criminal cases tends to be more uniform, and because of the significant number of indigent appeals, the criminal transcript provisions are drawn more narrowly and specifically than the counterpart civil transcript provisions in Rule 5(b)(2).

Rule 5(b)(2) addresses transcripts in civil cases. Subparagraph (A) is a combination and condensation of the provisions of M.R. Civ. P. 74(b)(1), (2), & (3). It requires that the appellant file, with the notice of appeal and transcript order form, a statement of the issues the appellant intends to present on appeal and serve the other parties a copy of the transcript order form and the statement of issues on appeal. The statement of the issues is for initial guidance for developing the record and transcript orders, and does not preclude a party from raising on appeal other issues that have been properly preserved in the trial court.

If the appellant is making a sufficiency of the evidence challenge to the result, the appellant must include in the record a transcript of evidence relating to the finding or conclusion challenged on sufficiency evidence grounds.

The time within which an appellee must designate other parts of the transcript is reduced from 10 days in present practice to 7 days. This makes the designation requirements consistent with the designation requirements for criminal appeals which are raised from 5 to 7 days.

Rule 5(b)(2)(B) closely tracks the provisions of M.R. Civ. P. 74(b)(4). As presently organized, this only applies to civil appeals. It requires that appropriate financial arrangements be made for preparation of the transcript within 7 days after filing of the notice of appeal. The paragraph also provides that in the event acceptable financial arrangements are not made or required deposits are not paid, the court reporter or the electronic recording division may consider the order canceled and so inform the Clerk of the Law Court. When such occurs, the appeal proceeds without a transcript.

Rule 5(c) authorizes ordering of condensed transcripts. It follows M.R. Civ. P. 74(b)(5). There is no similar provision in the criminal rules. However, 5(c) authorizing condensed transcripts, applies to both civil and criminal appeals.

Rule 5(d) addresses circumstances when a transcript cannot be prepared. It tracks the language of M.R. Civ. P. 74(c) and M.R. Crim. P. 39(b). The initial service and response times are changed from present practice of 30 days and 10 days to 28 days and 7 days which follows the general effort to make times for action and response follow in defined numbers of weeks from the date of the triggering event.

Rule 5(e) regarding correction or modification of the record follows the language or current M.R. Civ. P. 74(e) and M.R. Crim. P. 39(g).

Rule 5(f) regarding the record on an agreed statement of facts follows the current language of M.R. Civ. P. 74(d) and M.R. Crim. P. 39(i). Note that, even though the statement is agreed to, the statement must be submitted to the trial court for approval as the record on appeal to the court. This helps assure that any statement of appeal to the Law Court, even if prepared by agreement of the parties, accurately reflects the challenged trial court action.

Advisory Notes – September 10, 2001

This amendment [to Rule 5(b)(2)(A)] clarifies that a copy of any additional transcript order by an appellee shall be filed with the clerk of the Law Court so that the Law Court will have all necessary materials should any dispute arise requiring a Law Court order.

Advisory Notes – July 1, 2010

These amendments to Rule 5(d) clarify procedures in several respects.

First, as stated in M.R. App. P. 16(1) the references to appellant or appellee refer to the parties to the action, whether represented by counsel or not.

Second, Rule 5(d) only applies when a hearing was not recorded or, if the hearing was recorded, a transcript cannot be prepared because of a failure of the recording. If a transcript can be prepared, but the appellant elects not to purchase a transcript, the rule does not apply.

Third, the amendment ends current confusion about timing and trial court notice of the need to review and act on a proposed 5(d) statement. The amended rule requires that the draft statement and any responding objections or amendments be filed with the trial court at the same time that they are served on the other party. Further the timing is shortened so that the trial court will be more likely to have a fresher memory of the event. The proposed statement must be filed with the trial court and served on the other party no later than 21 days after entry of judgment or 14 days after filing the notice of appeal, whichever is sooner. It is anticipated that the trial court would act on the statement to approve it, or approve it with amendments, as expeditiously as possible, so that the statement could be filed as part of the record on appeal. The trial court would have discretion to reject a statement upon a finding that it did not accurately reflect the record upon which the trial court's decision was based.

Advisory Note – November 2011

Rule 5(b)(1) addresses financial responsibility for transcript production. Upon the establishment of the Maine Commission on Indigent Legal Services, the funds allocated for the representation of indigent persons were transferred from the Judicial Branch to the Maine Commission on Indigent Legal Services. This amendment clarifies that transcripts produced for those indigent parties represented by court-appointed or court-assigned counsel are to be paid for by the Maine Commission on Indigent Legal Services.

Advisory Note – July 2012

The amendment to Rule 5(a) clarifies that the term "reporter," as used in the Appellate Rules, includes the services of the Office of Transcript Production.

The amendments to Rules 5(c) and 6(c), below, require parties to file condensed transcripts, in accordance with M.R. Civ. P. 5(i)(2) as part of the record on appeal.

Advisory Note – October 2012

The amendment [to Rule 5(b)(1) and (2)] is a technical change to recognize the new title for what is now called the Office of Transcript Production and to make the reporter reference consistent with the definition in Rule 16(4).

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

RULE 6. FILING RECORD WITH THE LAW COURT

(a) Filing the Record. Within 21 days of the filing of the notice of appeal and, when required, the requisite fee or waiver, the clerk shall file the trial court clerk's record with the Clerk of the Law Court. An indigent criminal defendant may have a copy of the clerk's record without charge.

(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: the material pleadings; motions and actions thereon; documentary exhibits; a list of retained exhibits; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; in an action tried without a jury, the opinion, if any; the judgment or part thereof appealed from; and the notice of appeal with the date of filing.

Documentary exhibits include papers, maps, photographs, diagrams, 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 or articles of clothing, shall be retained by the clerk of the trial court, except upon order of the Law Court. If a documentary exhibit 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 of 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.

(c) Filing of Reporter's Transcript. Unless the Law Court otherwise directs, within 56 days of 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 an electronic copy of the 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 5 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) Retention of Record in Trial Court. Notwithstanding the provisions of subdivisions (a) and (b) of this rule, the parties may stipulate, or the trial court on motion of any party may order, that the clerk of the trial court shall temporarily retain the record for use by the parties in preparing the appeal. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by presenting to the Clerk of the Law Court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt 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.

If the record or any part thereof is required in the trial court for use pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the Law Court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the trial court shall allow and copies of such parts as the parties may designate.

(e) Record for Preliminary Hearing in the Law Court. If prior to the time the record is transmitted a party desires to make in the Law Court a motion 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.

RULE 6
Advisory Notes – January 1, 2001

Rule 6(a) relating to filing the record with the Law Court follows the provisions of M.R. Civ. P. 74A(a) and M.R. Crim. P. 39(e). The requirement in the present criminal rule that the clerk must copy and furnish copies of the record to the State and the defense is eliminated. The current practice places a significant burden on the clerk's offices that is largely unnecessary with today's record keeping where both the State and the defense already have copies of most materials that are in the record. Where parties believe that their record material may be incomplete, they are, of course, free to review the clerk's file and request copies of any materials they do not have.

The rule continues the provision allowing indigent criminal defendants to have a copy of the clerk's record without charge.

Rule 6(b) addresses the contents of the clerk's record to be submitted to the Law Court. It tracks very closely the current language of M.R. Civ. P. 74A(b) and M.R. Crim. P. 39(c). However, the requirement in the current rules that the clerk prepare a table of contents of a sometimes voluminous record is eliminated. The contents of any record may be easily reviewed by following the docket entries which are presumed to accurately reflect the history of the case. As the rule notes, exhibits that are tangible objects generally are not forwarded from the trial court to the Law Court except upon special order of the Law Court. Likewise, documentary exhibits of unusual bulk or weight are to be retained by the clerk of the trial court unless specially ordered by the Law Court. The contents of the record are, of course, to be distinguished from the material required to be included in the appendix. An appendix, as addressed in Rule 8, is to include only those selected portions of the record required by the rule or otherwise deemed by the parties of particular importance to appellate review of the trial court's actions.

The provision of this rule allowing any party to designate additional portions of the trial court clerk's record within 7 days of the filing of the notice of appeal is not designed to allow parties to supplement the record by filing materials not presented to the trial court in the course of its decision making process. An attempt to supplement the record by filing and attempting to designate materials not considered by the trial court is inappropriate and may subject the person attempting to file such materials to sanctions on appeal. This provision allowing

designation of additional portions of the trial court clerk's record relates to requests to submit tangible object exhibits or bulky documentary exhibits to the Law Court or to include with the record other materials that were available to the trial court for consideration but may not have been included in the official clerk's record. Examples of such materials would be visual aids that were displayed to the fact-finders or other visual aids or exhibits that the record will reflect were displayed or offered for admission into evidence but may not have been admitted or otherwise become part of the clerk's record.

Rule 6(c) relating to filing of the reporter's transcript tracks similar provisions presently in M.R. Civ. P. 74A(b) and M.R. Crim. P. 39(d). The rule emphasizes that, even if the reporter may have some difficulty meeting the 56-day time limit, the party ordering the transcript is expected to exercise due diligence to promote and assure the timely filing of the transcript. *See Putnam v. Albee*, 1999 ME 44, ¶¶ 6-9, 726 A.2d 217, 219.

Rule 6(d) relates to retention of the record in the Superior Court for use by the parties in preparing appellate papers or for further trial court use. It consolidates the significantly repetitive provisions of M.R. Civ. P. 74A(c), (d), (e), & (f). Although there is no comparable provision in the criminal rules, subdivision (d) will apply to both criminal and civil cases. In addition to this subdivision, parties may use M.R. App. P. 14(c) to seek adjustment of record transfer requirements.

Rule 6(e) makes provision for special transmission of parts of the original record to the Law Court where such is required for preliminary hearings in the Law Court. This reflects present practice adopted in M.R. Civ. P. 74A(g) and M.R. Crim. P. 39(h).

Advisory Notes – August 2004

This amendment to M.R. App. P. 6(c) directs the Electronic Recording Division and court reporters, when they file a paper transcript with the Law Court to also include with the transcript sent to the Clerk of the Law Court, an electronic copy of the transcript in whatever format they have used to prepare and print the transcript. This electronic copy is not intended to replace the paper transcript but is intended to be available to the Justices of the Law Court, in addition to the paper transcript, to support their review of the record on appeal.

Advisory Note – July 2012

Rule 6(a) is amended to make clear the need for payment of the filing fee in those cases where a filing fee is required. This requirement is also discussed in M.R. App. P. 2(a)(1) and (4), M.R. App. P. 2(b)(3), M.R. App. P. 3(a), and M.R. Civ. P. 5(f).

The amendments to Rules 5(c), above, and 6(c) require parties to file condensed transcripts, in accordance with M.R. Civ. P. 5(i)(2) as part of the record on appeal.

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 send forthwith to each counsel of record and each party who is not represented by counsel a written notice stating the dates on which the appellant's and the appellee's briefs and the appendix are due to be filed, the date on which appellant's reply brief, if any, is due to be filed and the date after which the appeal will be in order for consideration. The due dates stated in the schedule for briefing and consideration notice 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 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

- determines jeopardy pursuant to 22 M.R.S. § 4035;
- terminates parental rights pursuant to 22 M.R.S. § 4055 or 18-A M.R.S. § 9-204;
- grants a decree of adoption pursuant to 18-A M.R.S. § 9-308;

- appoints a guardian for a minor pursuant to 18-A M.R.S. § 5-207;

- denies the termination of a guardianship pursuant to 18-A M.R.S. § 5-210;

- grants a guardianship for an adult pursuant to Title 18-A, Article 5, part 3;

- establishes or changes contact between a parent and child pursuant to 19-A M.R.S. § 1653(2) or (10);

- grants or denies a determination of de facto parenthood;

- grants contact under the Grandparents Visitation Act, 19-A M.R.S. § 1801 et seq.;

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

- determines that a criminal defendant is not criminally responsible by reason of insanity; or

- disposes of an appeal from an agency's denial of a request under the Freedom of Access Act.

(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 days (2 weeks) after the date that the appellee's brief is filed.

No extensions of time shall be granted except pursuant to Rule 12A(b)(1)(A) or upon a showing of a significant and unanticipated emergency that prevents a timely filing of a brief.

If a party in a Track B case wishes to expedite the appeal, that party may file a motion for expedited process, following the requirements for motion practice contained in Rule 10.

The specific due date for each brief shall be listed on the written notice sent by the Clerk of the Law Court pursuant to Rule 7(a).

(c) 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 two printed copies of each brief shall be served on each of the other parties who are 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 electronic copy of a brief shall be emailed to the Clerk of the Law Court at the email address provided by the Clerk in the written notice issued pursuant to subdivision (a). The electronic copy shall be in the form of a single .pdf file. 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 (c)(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.

(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, 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 days after the date on which the appellee's brief is due to be filed or is filed, whichever is earlier.

RULE 7
Advisory Notes – January 1, 2001

Rule 7 relating to establishing the briefing schedule follows the language of M.R. Civ. P. 74B and 75, and M.R. Crim. P. 39(f) and 39A, combining those two rules regarding the briefing schedule into one.

In subdivision (b), the time for filing briefs is made uniform at 35 days after notice of docketing the record for the appellant's brief and 28 days after service of the appellant's brief for the appellee's brief. The current civil rules provide 40 days for the appellant's brief. The criminal rules provide 30 days for the appellant's brief. Both rules presently provide 30 days for the appellee's brief, that number is being reduced to 28. The 35 day and 28 day figures which are made now uniform for both criminal and civil appeals are intended to adopt the weekly calculation for timing for court unification time period amendments.

Subdivision (c) continues the requirement of filing 10 copies of each brief which presently appear in M.R. Civ. P. 75(b) and M.R. Crim. P. 39A(b).

Subdivision (d) is likewise similar to subdivision (c) of the current counterpart rules.

Subdivision (e) is changed from the current counterparts in M.R. Civ. P. 75 and M.R. Crim. P. 39A to add the words "or other consideration" after the words "for oral argument." This change reflects current practice under which many cases are considered by the Law Court on briefs without oral argument. The reference to "other consideration" reflects consideration on briefs in lieu of oral argument. Thus, under subdivision (e), all appeals may be considered by the Law Court either by oral argument or on briefs at any time 14 days after the date on which the appellee's initial brief is due to be filed or is filed, whichever is earlier.

Advisory Notes – September 10, 2001

The purpose of this amendment [to Rule 7(b)] is to clarify the briefing schedule and tie it to a specific event, the filing of the record in the Law Court. This is consistent with practice before adoption of these rules and as authorized by former M.R. Civ. P. 75(a).

The amendment to Rule 7(c) clarifies that the copy requirements apply regardless of whether a party is represented or not.

Advisory Notes – July 9, 2009

The amendments to Rule 7(a) recognize that many appeals involve one or more unrepresented parties by clarifying language to be consistent with established practice that all parties, not just "counsel," receive notices. The amendments also recognize that Law Court scheduling is no longer tied to terms. Further, with the

Court's current workload, it is no longer possible to accurately identify the month in which an appeal may be considered.

The amendment to Rule 7(b) significantly changes briefing schedule practice to (1) extend by three weeks the time to plan, prepare and file the appellant's brief and the appellee's brief; (2) identify a specific date, 105 days (15 weeks) following filing of the record when an appellee's brief is due, and another specific date, 14 days (2 weeks) after the appellee's brief is due for the filing any reply brief; and (3) limit the consideration of motions to extend the time for filing a brief to those few situations when a significant and unanticipated emergency may justify a request for an extension of time.

With the additional three weeks to plan for, prepare and file briefs being allowed to both the appellant and the appellee, the Court will no longer entertain motions to extend time for filing briefs based on poor planning or scheduling, the claimed press of other business or court dates, vacations, school or family events, non-emergency medical procedures and other similar events that now require the Court to consider a very large volume of motions to extend time for filing briefs. It is anticipated that from this point forward, extensions of time to file briefs will be rarely requested and even more rarely granted, and then only in cases of significant and unanticipated emergencies. It would be an unusual case that could demonstrate insufficient opportunity to plan and prepare a brief within the eight week window of time to prepare the appellant's brief and the additional seven week or longer window of time to prepare the appellee's brief. Leaving brief preparation to the last minute will be bad practice, as accommodation of last minute difficulties will be far less likely than in the past.

Specific dates will be identified in the briefing schedule sent by the Clerk of the Law Court. In current practice the time for filing the appellee's brief has been entirely dependent on the time of receipt of the appellant's brief. This made work planning difficult in some busy practices. The change should not result in significant delay in considering most appeals. In recent experience, over 95% of appellants' briefs are filed at or very close to the filing deadline.

Advisory Note – November 2011

Rule 7(a) is amended to (1) establish the completion of the record as the trigger for issuing the briefing schedule, and (2) clarify that once the briefing schedule issues, the dates in it are firm and are not automatically changed by later filings. The reference to completion of the record replaces language stating that

the schedule would be issued upon "docketing of the reporter's transcript and the trial court clerk's record." That language was incomplete because there are often multiple transcripts or a transcript and a statement in lieu of a transcript, and there may be alternatives to the clerk's record.

The amendment also adds a sentence providing that a briefing schedule is not affected by a later transcript order, to clarify that once the record is deemed complete, later additions to, or efforts to add to, the record on appeal do not affect the due dates for briefs and the appendix unless the Court otherwise indicates. In the past, some parties have assumed that when they order a new transcript, it means that the record is no longer complete and that the briefing schedule is no longer valid. Because the rules do not permit later additions to the record without leave of court, any untimely transcript order form does not affect the progress of the appeal absent Court order.

Advisory Note – November 2011

The amendment to Rule 7(b) changes the start of the running of the briefing schedule from the date on which the record is filed in the Law Court, a date that may not be apparent to the parties, to the date stated in the written notice sent to the parties to the appeal by the Clerk of the Law Court indicating that the record on appeal is complete.

Advisory Note – July 2012

Rule 7(b) is amended to clarify that the indicated time for preparing all briefs runs from the date that the record on appeal is complete, and to notify the parties that the specific filing dates will be listed on the written notice sent by the Clerk of the Law Court.

Rule 7(c)(1) is amended to clarify that printed copies of briefs are what is required. Rule 7(c)(2) is adopted to encourage parties to file an electronic copy of each brief in addition to the required printed copies. The electronic copy is due on the same date as the printed copies, but only receipt of printed copies is considered in determining compliance with the filing deadlines. The rule permits the Clerk of the Law Court, for good cause, to relieve a party of any of the requirements of paragraph 2, including the requirement that the copy be in .pdf format. Good cause might include a party's technical inability to produce a .pdf copy of the brief.

Advisory Note – October 2012

The amendment [to Rule 7(b)] returns the time limit for an appellant to file a reply brief to 14 days after the filing of the appellee's brief. This time limit applied for the first eight years of operation of this Rule and is consistent with Rule 7(e), specifying that any appeal is in order for consideration 14 days after the appellee's brief is filed or is due to be filed, whichever is earlier. The 2009 amendment had created confusion and uncertainty as to when an appeal was in order for Law Court consideration in those instances when an appellee's brief was filed in advance of its filing time limit.

Advisory Note – June 2014

The amendment to Rule 7(b) establishes Track A and Track B appeals, defines the matters that are to be placed on Track A, establishes the time for briefing in appeals on each track, and authorizes motions to expedite an appeal that has been placed on Track B.

RULE 8. APPENDIX TO THE BRIEF

(a) By Whom Filed. In every case the party who 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 no later than 14 days after the date on which the appellant's brief is due to be filed. In 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

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 those documents listed below as mandatory.

(2) The appendix shall not include any documents 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.

(3) Documents other than those that are designated "mandatory" 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.

(5) An appendix that (i) fails to include mandatory documents, or (ii) does not present documents in the required order: first documents required by subdivision (g), then documents required by subdivision (h), then other documents, or (iii) includes excessive duplication of documents, or (iv) otherwise is not prepared in compliance with these rules may be rejected, with the party who 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 confer and 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, 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 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.

(f) Content, Format. The appendix shall be bound in white stock, and each page shall be numbered consecutively. If the appendix consists of 20 pages or less, 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. 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. The appendix shall be spiral bound or bound by a similar process that permits the pages to lie flat when opened. Plastic or metal spikes, staples, or posts shall not be used in binding. Oversize exhibits such as maps, and electronic exhibits on disk or another medium, may be attached to the appendix in any method that permits the appendix to be handled as a bound volume. 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 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, charging instrument, or initiating document.

(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 of a summary judgment, a copy of the parties' statements pursuant to M.R. Civ. P. 56(h).

(2) Local Government and Administrative Appeals.

(A) If the appeal relates to the decision of a State or local 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 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.

If the appeal relates to the interpretation or enforcement of a contract, a copy of that contract.

(6) Family matters.

If the appeal challenges a decision related to a family matter:

The child support affidavits, if child support is challenged;
The financial statements of the parties if property distribution or child or spousal support is challenged;
The report of the guardian ad litem, if any, if a parental rights decision is challenged.

(7) Transcript.

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) 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, on 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 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.

RULE 8

Advisory Notes – January 1, 2001

The rule regarding the appendix to the briefs is significantly rewritten and intended to change current practice. Thus, it is significantly different from M.R. Civ. P. 74C. Other than a brief reference to an appendix in M.R. Crim. P. 39B(a)(6), there is no counterpart provision in the current criminal rules. The terms of Rule 8 are self-explanatory. It makes significant change from current practice because of dissatisfaction with the current practice which frequently results in necessary materials not being in the appendix and thus available to the justices of the Law Court and in appendixes which, while lacking important materials, are sometimes disorganized and over-inclusive. Key features of the revised rule:

— Makes certain contents mandatory and requires that those portions of the appendix that are mandatory for all cases appear in a certain order in the appendix.

— Specifies that 8 copies of the appendix are to be prepared and filed, such that one copy will be available to each justice.

— Changes the time for filing the appendix to 14 days before the date on which the appellee's brief is due to be filed. This is later than the current practice which requires filing contemporaneously with the appellant's brief. For Department of Human Services Child Protective cases, the appendix must be filed 14 days before the appellant's brief is due. This difference reflects a request by the Attorney General's Office and recognizes the differing nature of child protective cases, where DHS, as the appellee, must prepare the appendix.

— Limits the length of the appendix to 150 pages for each volume and no more than 2 volumes (i.e. 300 pages) without prior approval of the Law Court).

— Authorizes a separate supplement of legal authorities which does not count towards the appendix page limit.

The rule continues the present practice under M.R. Civ. P. 74C(f) which allows hearing on the original record without the necessity of an appendix where the Law Court allows such on demonstration of good cause. This provision, in subdivision (k) of Rule 8, applies to both criminal and civil cases.

Advisory Notes – September 10, 2001

The amendment to subdivision (f) clarifies that printing shall only be on one side of each page.

The amendment changes in Rule 8(h)(7) are to remove the requirement that the appellant provide an original transcript to the Court. The original is separately filed by the court reporter pursuant to Rule 6(c). The appellant remains responsible for filing one complete copy of the transcript or transcripts. Unless the transcript is very brief, it should not be included in full in the appendix. 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.

Advisory Notes – August 1, 2009

Rule 8 is amended in several respects to clarify current practice regarding preparation and filing of the appendix. In Rule 8(a) and at other points references to the Department of Human Services are replaced with references to the State. State responsibility for preparation of the appendix in child protective actions is limited to those cases in which the State initiated the action. It does not apply to actions initiated by private parties in the Probate Courts.

Rule 8(b)(1) is amended to change the time for filing the appendix from the present 14 days before the appellee's brief is due to 14 days after the appellant's brief is due. The appellant's brief is due at a time certain, 56 days (8 weeks) after the filing of the record. This change makes the appendix due at a time certain, 70 days (10 weeks) after the filing of the record. The Court's schedule for filing briefs and appendices provided to each party in each case, will indicate specific dates for filing of the appellant's brief, the appendix, and the appellee's brief as a result of the changes adopted in this rules amendment order. If the time for filing the appellant's brief is extended, the time for filing the appendix will be similarly extended.

Rule 8(c)(3) is amended to clarify that documents that are not mandatory pursuant to Rules 8(g) and 8(h) should be placed in the appendix following the mandatory documents.

Rule 8(c)(5) is adopted to specify areas where, in the past, there has been a significant lack of compliance with the appendix rules and to caution that such lack of compliance, in the future, is more likely to invite sanctions. Sanctions may range from being required to redo the appendix in proper form to dismissal of the appeal. The areas in which there has been a significant lack of compliance with the rules in past practice include: failure to include within the appendix those documents designated as mandatory by Rules 8(g) and 8(h); failure to present the mandatory documents in the required order in the appendix; and excessive duplication of documents in the appendix despite the directive of Rule 8(c)(4) that duplication of documents should be avoided. After a document appears in the appendix once, future places where that document should appear should include only a one page cross-reference to the document at the point where it originally appears.

There has been a significant practice of filing appendices with documents organized in chronological order from the first documents that appear in the record to the most recent documents that appear in the record. This is improper under rules that have been in effect since 2001. All appendices should include documents in the following order: (1) a table of contents; (2) the trial court docket entries, including all docket entries if the matter was transferred from the District Court to the Superior Court or was subject to a venue transfer from one court to another court; (3) the judgment or judgments and court orders that will be addressed in the appeal, including the final judgment; (for example, if a ruling on a motion to suppress is subject to challenge, the court order addressing the motion to suppress must be included and also the final judgment must be included), (4) the

charging document or complaint which initiated the action and, if the complaint was amended, a copy of the amended complaint that served as the basis for the judgment. Following these documents should be any documents that are mandatory pursuant to Rule 8(h).

Rule 8(e) is amended to clarify that an appellant is entitled to request that an appellee pay for part of the cost of preparing an appendix only if the documents that the appellee seeks to include, and that the appellant believes are unnecessary, are not mandatory documents.

Rule 8(f) is amended, in a manner similar to a recent rules amendment adopted by the First Circuit Court of Appeals, to require that the appendix be printed on both sides of each page. With this change, the size of the appendix is limited to one volume not exceeding 150 pages printed on both sides, unless the Court approves a larger number of pages. The actual amount of printed material that may appear in the appendix (presently 300 pages of printing) is not changed, because printing may now appear on both sides of 150 pages. The amendment also clarifies that use of staples is not appropriate for binding an appendix.

Rule 8(g)(3) is amended to clarify that in the appendix, following the docket entries, each trial court judgment, order, or decision that will be addressed in the appeal, including the final judgment, must appear.

Rule 8(h)(2) is amended to add a requirement that for appeals from municipal agency decisions, the appendix must include a copy of those sections of the municipal ordinance authorizing the action of the municipal agency from which the appeal is taken. Entire volumes of municipal ordinances should not be included. Only those sections of the ordinance related to the issues on appeal and the municipal agency's authority to act on the matter should be included. This is to assure that the Court has available the authorizing ordinance to determine, for example, whether the agency should have considered the matter de novo or as an appellate body, and whether the agency had jurisdiction to hear the matter presented to it.

Rule 8(h)(7) is amended to remove the requirement that the appellant file with the Court an additional copy of the transcript of any proceeding, beyond the copy that has already been provided to the court by the court reporter. As amended, Rule 8(h)(7) notes that the portions of transcripts included in 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.

Advisory Notes -July 1, 2010

Rule 8(b)(1) is changed to allow the parties to agree that the appendix will be filed later than the due date set by the rule. The court does not need the appendix until the appeal is ready for consideration on the briefs or for oral argument. If each appellee does not object to receiving the appendix closer to the date the appellee's brief is due, then there is no reason to require permission from, or even notice to, the Law Court to enlarge the time for the filing of the appendix. However, the appendix must be filed no later than the date that the appellee's brief is filed or is due to be filed, whichever occurs first. The appendix must be filed even if the appellee's brief is not filed by its due date.

Advisory Note – July 2012

Rule 8(f) is amended in two respects. First, the meaning of "page" is clarified. As the rule exists, there is confusion over whether the limit of "150 pages printed on both sides" means 75 sheets of paper printed on both sides of the paper for a total of 150 numbered pages, or 150 sheets of paper printed on both sides of the paper for a total of 300 numbered pages. The amendment clarifies that the limit is for 150 sheets of paper printed on both sides of the paper, for a total of 300 numbered pages. A "page" is one side of the paper, and each side of the paper should therefore be numbered.

Second, the rule now specifically permits what has been a common practice: attaching oversize exhibits and electronic storage media to the appendix. The Court encourages inclusion in the appendix of important maps, plans, and other oversize exhibits, as well as important electronic exhibits such as audio or video recordings. Like with paper exhibits, oversize and electronic exhibits should be included in the appendix only if they are important to an issue on appeal, and should be included in the table of contents.

RULE 9. BRIEFS 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 argument. 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.

(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 when they exist. The brief of the appellant shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(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 of the case need not be included unless the appellee is dissatisfied with the statements of the appellant. The brief of the appellee shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(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. A reply brief shall not exceed 20 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause. No further briefs may be filed except with leave of the Law Court.

(d) Briefs on Cross-Appeals. If a cross-appeal is filed, the brief of the second party to appeal shall contain the issues and argument involved in the cross-appeal as well as the answer to the brief of the appellant. The brief of the second party shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(e) Brief of an Amicus Curiae.

(1) *General.* Except as provided in paragraph (2) of this subdivision, 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. An amicus curiae brief shall be filed on the date on which the

appellee's brief is filed, unless the Law Court for cause shown shall grant leave for later filing. Any party may file a reply brief replying to new matter raised by the 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. The brief of an amicus curiae shall not exceed 50 pages, and any reply brief thereto may not exceed 20 pages, without prior approval of the Law Court, which shall be granted only upon a showing of good cause. The motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

(2) *Maine Tort Claims Act.* 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 where the Attorney General is not appearing representing a party to the action. Unless all parties otherwise consent, in any such action where the Attorney General has received notice of appeal as provided in Rule 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) Form of Briefs. Briefs shall be signed. 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 type. Briefs shall be bound on the left hand margin in volumes having pages 8-1/2 x 11 inches and typed matter not exceeding 6 1/2 x 9 1/2 inches, with double spacing between each line of text except for quotations. The front cover of the brief shall contain: (1) the name of the Supreme Judicial Court sitting as the Law Court and the Law Court docket number of the case; (2) the title of the case; (3) the nature of the proceeding before the Law Court (e.g., Appeal; Report; Certification) and the name of the court, agency, or commission below; (4) the title of the document (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed. The covers 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.

(g) Page Limit Calculations. The table of contents and the table of authorities are not counted in calculating the page limits set in this rule.

(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.

RULE 9

Advisory Notes – January 1, 2001

Rule 9 tracks very closely the generally comparable provisions of M.R. Civ. P. 75A and M.R. Crim. P. 39B. The key changes from those comparable rules relating to the nature and content of briefs on oral arguments are as follows:

— The reference to an appendix in M.R. Crim. P. 39P(a)(6) is eliminated as the appendix is now governed by M.R. App. P. 8.

— Subdivision (d) of both M.R. Civ. P. 75A and M.R. Crim. P. 39B which relates to reproductions of statutes, rules, regulations, etc. is eliminated. Any supplemental authorities which parties desire to file should be included in a separate supplement, filed with the appendix as specified in M.R. App. P. 8(l).

— A cap of 50 pages is placed on the length of briefs on cross-appeals. M.R. Civ. P. 75A(e) included a 75-page limit. M.R. Crim. P. 39B(e) had no page limit.

— Subdivision (e) relating to briefs of an amicus curiae generally follows the language of M.R. Civ. P. 75A(f). The more expansive language is necessary particularly to accommodate the special provision that needs to be made regarding filing of a brief relating to the Maine Tort Claims Act, which is, of course, unique to civil cases. The more formal approval provisions for filing a civil amicus brief are also included in this rule now applicable to both criminal and civil cases.

— The type or font size requirements addressed in subdivision (f) are designed to achieve clear, easy to read text. Plain roman type or font styles should be used, although italics or boldface may be used for emphasis. Appropriate type styles to use include Bookman, Courier, Geneva, Georgia, or other similar type styles. Type styles such as Arrus, Script, or Times should be avoided.

— Subdivision (g) is added to note, as under present practice, that the pages for the table of contents and table of authorities are not counted in calculating the page limits for the briefs.

Advisory Notes – September 10, 2001

The amendments to subdivision (f) add more specification to the printing and type or font size requirements and make clerical corrections to the original Rule. The signing requirement reflects current practice carried over from previously applicable rule requirements. *See* M.R. Civ. P. 11.

Advisory Notes – August 1, 2009

Rules 9(a) and 9(b) are amended to require that for each issue presented for appeal, the brief also state the standard of appellate review that will be applicable to resolution of each issue. This is to help assure consideration of the proper standard of review for each issue presented on appeal, an area that has been ignored in some brief writing practice. The appellate standard of review for most issues will fall into one of three broad categories: (i) "de novo" review, (ii) "clear error" or "sufficiency of evidence" review, and (iii) "abuse of discretion" or "unreasonable exercise of discretion" review. The law regarding standards of review is addressed in Chapter 4 of *Maine Appellate Practice* (2008).

Advisory Note - November 2011

The reference [in Rule 9(a)] to "pages" of the record was an outdated reference from the time when the trial court clerks individually numbered each page of the record before forwarding the record to the Law Court pursuant to M.R. App. P. 6. To ease review of briefs, citations to the record should continue to be as precise as possible. Pursuant to the amendment, citations to the record must indicate the particular document or exhibit referenced, including page numbers when page numbers exist.

Advisory Note – November 2011

Rule 9(h) is adopted to establish the proper procedure when one or more parties to an appeal elect to adopt another party's argument or brief. The first two sentences of Rule 9(h) are identical to Fed. R. App. P. 28(i). The last two sentences are added to provide a mechanism for adopting another party's brief when the adopting party is not otherwise filing a brief and to provide the due date for any adoption.

Advisory Note – October 2014

Rule 9(f) is amended to omit the requirement that briefs be printed in Bookman font, to change the minimum size of the font from 12-point font to 14-point font, and to standardize formatting.

Advisory Note – August 2015

All references to the Maine Revised Statutes Annotated in the Maine Rules of Appellate Procedure are updated to refer to the Maine Revised Statutes.

RULE 10. MOTIONS AND OTHER PAPERS IN THE LAW COURT

(a) Motions. 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. All motions will be acted on without oral argument unless otherwise ordered. Motions will not necessarily be granted even though assented to by other parties. Motions may be acted upon at any time, without waiting for a response thereto. 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.

(b) Certificate of Service Required. Every motion shall be served on the other parties 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) 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 point type, except that footnotes and quotations may appear in 11 point type. 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. Additional legible copies shall be filed as requested by the Clerk of the Law Court.

RULE 10
Advisory Notes – January 1, 2001

Rule 10(a) generally tracks the language of M.R. Civ. P. 75B(a) and M.R. Crim. P. 39C(a).

Rule 10(b) generally tracks the language of M.R. Civ. P. 75(B)(b). There is no comparable provision of the criminal rules. However, the distinctions made in the civil rules between motions for procedural orders and motions for substantive relief are continued in the new rule in light of the different manner of address of such motions. Procedural motions are generally addressed by the Chief Justice or a single justice. Substantive motions are generally addressed by the Court.

Rule 10(c), relating to substantive motions, follows M.R. Civ. P. 75B(c) and has no criminal counterpart. Both Rules 10(b) and 10(c) in these rules are applicable to both criminal and civil cases. Motions for reconsideration are not considered motions for substantive relief and are separately addressed by M.R. App. P. 14(b).

Rule 10(d) generally follows the similar language of M.R. Civ. P. 75B(d) and M.R. Crim. P. 39C(b). The requirement that footnotes and quotations appear in 11-point type is taken from the civil rules.

Advisory Note – July 1, 2010

Rule 10 is amended to reflect practical experience of the Court in the nine years since the Maine Rules of Appellate Procedure took effect. The rule is changed substantially to: (1) remove the distinction between procedural and substantive motions; (2) require that every motion be accompanied by a certificate that the motion was served on the other parties; and (3) clarify the required format of motions and oppositions. The distinction between procedural and substantive motions is removed because it created confusion in practice, and frequently resulted in the incorrect number of copies of motions and responses being filed. Note also that motions for reconsideration of Law Court decisions are not governed by Rule 10; they are governed by M.R. App. P. 14(b).

The changes to Rule 10 are listed below:

The language in M.R. App. P. 10(a) regarding responses to motions is removed from this subdivision and placed in subdivision (c) of this rule.

Former subdivision 10(b) dealing with procedural motions is replaced with a new subdivision (b) which requires that every motion be served on the other parties and accompanied by a certificate of service on the other parties. Motions filed without a certificate of service may be returned to the party filing the motion.

Former subdivision 10(c) dealing with substantive motions is replaced with a new subdivision (c) which sets the time and requirements for responses to motions.

Subdivision 10(d) is changed to: (1) apply to motions, responses, and other papers filed with the Law Court; (2) clarify that motions need not be bound along the entire left-hand side of the paper, but need only be stapled in the upper-left corner; (3) require the original and one copy be filed for every motion and response; and (4) provide that the filing party shall provide any additional copies to the Court as requested by the Clerk of the Law Court. The Court may request that the filing party file additional copies when it determines that the motion will be considered by the entire Court.

RULE 11. CONSIDERATION BY THE LAW COURT

(a) Notice of Time of Oral Argument. If the case 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. An application for continuance of oral argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(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 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 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) On motion joined in by all parties and for good cause shown, the Law Court may allow the parties to submit a case on the briefs.

RULE 11
Advisory Notes – January 1, 2001

Rule 11 relating to Law Court consideration essentially adopts the similar provisions of M.R. Civ. P. 75C and M.R. Crim. P. 39D, but the rule recognizes different tracks for oral argument or on briefs consideration. The time for oral argument is changed from 20 minutes to "up to" 20 minutes to allow the potential for more scheduling flexibility. Subdivision [(g)] relating to on briefs consideration is in two paragraphs, the first of which relates to submission on briefs by determination of the Law Court, and the second of which relates to submission on briefs at the request of the parties. The special findings suggested in the current rule regarding either frivolity of appeal or control of the issues by recently decided authority are eliminated. Such findings are not necessary and can be misinterpreted as an implicit adverse comment on the significance of cases submitted for decision on briefs.

Advisory Notes – June 1, 2007

This [amendment to M.R. App. P. 11(b)] changes [the] time for oral argument to 15 minutes for each side, to make oral argument timing similar to that of the United States Court of Appeals for the First Circuit. *See* F.R. App. P. 34, Local Rule 34(c)(1). As with current practice, the time allocation is to each side of an appeal. Where more than one party appears for oral argument as an appellant or an appellee, the parties must establish among themselves a fair allocation of the 15 minutes available for argument. The amendment also recognizes that the appellant may reserve up to three minutes for rebuttal.

Rule 11(f) relating to submission on briefs is redesignated as Rule 11(g), and a new Rule 11(f) is adopted to govern use of displays at oral argument. The amendment is intended to promote better planning for use of exhibits or displays at argument by requiring notice of planned use of exhibits or displays and suggesting more careful consideration of whether any exhibit that is used can be viewed by the Court without disrupting the capacity of interested persons to observe the argument. The new M.R. App. P. 11(f)(1) requires that any party planning to use any exhibit or display at oral argument must 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.

M.R. App. P. 11(f)(2) directs that any exhibit or display must be presented in a manner that permits it to be easily seen by each of the Justices without limiting the capacity of other interested persons to observe the proceedings. Any exhibit should have lettering or numbering sufficiently large that it can be easily seen by the Justices on the bench, and exhibits should avoid excessive diagramming that makes them too "busy" or difficult to explain or follow. Once an argument is completed, M.R. App. P. 11(f)(3) requires that an exhibit or display must removed so it is not visible to the Court unless the opposing party requests that the exhibit remain available for use in that party's argument.

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

(a) Constitution of the Law Court; Concurrence Required. 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. The Court shall hear and determine such questions 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. When a case is in order for consideration 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.

(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 a case, but does

not establish precedent and will not be published on the Judicial Branch website or in the Maine Reports.

RULE 12
Advisory Notes - January 1, 2001

Rule 12(a) relating to the composition of the Law Court and required concurrences when deciding cases is based on M.R. Civ. P. 75D(a). There is no comparable provision in the criminal rules, but the new rule will apply to criminal and civil cases. It reflects current practice in hearing and deciding criminal and civil cases. Additionally, the rule recognizes that a qualified justice may participate in a decision even though not present at oral argument. This practice is anticipated to occur rarely and is consistent with practice in the U.S. Supreme Court and other appellate courts. References to "consideration" are substituted for the current references "oral argument" in M.R. Civ. P. 75D(a). The last sentence requiring that a sentence to life imprisonment must be reversed if 3 justices support reversal, even with a 7 justice court, reflects the statutory requirement in 15 M.R.S.A. § 2115 to that effect.

Rule 12(b) relating to sessions of the Law Court is based on M.R. Civ. P. 75D(b). There is no comparable provision in the criminal rules. The court shall hold sessions for decision-making at times and places determined by the Chief Justice. M.R. Civ. P. 75D(b) required that such determinations of times and places be announced before July 1 of each year. However, with the continuous operation of the Law Court, requiring any particular deadline for determination of times and places by the Chief Justice appears to serve no purpose.

Advisory Notes – August 2004

The added M.R. App. P. 12(c) addresses the various forms for reporting decisions by the Law Court. A signed opinion is an opinion of the Law Court, including all of the justices who join the opinion, although it is issued by the individual justice named at the start of the opinion. A per curiam opinion is likewise an opinion of all of the justices in the panel who join the opinion, although it is not signed by any particular justice. Both signed opinions and per curiam opinions receive an official citation number, *e.g.*, 2004 ME 108, and become part of the permanent record of decisions of the Law Court, being published on the Judicial Branch website and in print versions of the Maine Reports.

The discussion of a memorandum of decision replaces Administrative Orders issued in 1989. A memorandum of decision decides a case and governs any future proceedings in that case, but it does not establish precedent for other cases and will not be published on the Judicial Branch website or in the Maine Reports. A memorandum of decision has a separate citation format, *e.g.,* Mem 04-128. However, except where relevant to the history of the particular case addressed by the memorandum of decision, a memorandum of decision has no precedential value and should not be cited as precedent in legal briefs or memoranda or in judicial opinions in unrelated proceedings.

A memorandum of decision may be used to decide cases in which the law governing resolution of the case is clear and no legal principle is being newly established or modified. A memorandum of decision may affirm, vacate or modify the judgment or decision being reviewed. Its function is to provide a succinct explanation of the Law Court's decision to the trial court and the parties to the appeal. The fact that a case merits a memorandum of decision does not suggest that the decision is not important or not relevant to future related proceedings. For example, in the criminal case context, a memorandum decision continues to be highly relevant when, subsequent to the decision, the defendant seeks to collaterally attack the underlying criminal judgment at the state level by way of post-conviction review (15 M.R.S.A. ch. 305-A) or at the federal level by way of habeas corpus (28 U.S.C. § 2254).

Advisory Note – July 2008

The direction [removed from the rule] that a judgment imposing a life sentence be reversed if three justices concur supporting a reversal was based on a sentence stating a similar requirement that appeared in 15 M.R.S. § 2115 (2007). In 2008, the Legislature amended § 2115 to remove that sentence and eliminate the possibility that a judgment imposing a life sentence could be vacated by a minority vote of the Court. PL 2008, ch 475.

The three justices provision in § 2115 was never intended to require that a judgment be vacated on a minority vote on the seven-member Court. The provision that three votes could vacate a conviction that had resulted in a life sentence was added to the law when the size of the Supreme Judicial Court was reduced from eight members to six members in 1929. Prior to that time, the voting requirements regarding a life sentence were stated in the Revised Statutes of 1916, c. 136, § 28. That section provided, in pertinent part, that on appeal by any person convicted of "any offense for which the punishment is imprisonment for life . . .

the concurrence of a majority of the justices shall be necessary to [order a new trial]."

As part of the creation of the statewide Superior Court, P.L. 1929, c. 141 was enacted. Section 1 of chapter 141 reduced the size of the Supreme Judicial Court from eight members to six members. Section 3 amended R.S. 136, § 28 to provide that in the case of a person convicted of "any offense for which the punishment is imprisonment for life . . . if 3 justices concur, the motion [for a new trial] shall be granted." Adopting this provision as part of the law reducing the size of the Court from eight members to six members was intended to address situations involving an evenly divided court, not to create the potential that a conviction could be vacated upon the votes of a minority of the justices participating in the decision.

This law remained essentially in the same form, *see* R.S. 1954, c. 148, § 30, until amended into the present § 2115 by P.L. 1965, c. 356, § 63. Throughout all of this time the Supreme Judicial Court included a Chief Justice and five Associate Justices.

In 1976, by enactment of P.L. 1975, c. 623, § 3-A, the size of the Supreme Judicial Court was increased from six to seven members. No change was made in the voting requirements for vacating a judgment that resulted in a life sentence. As a consequence, with seven justices on the Court, it was possible that a vote of a minority of the Court could result in the vacating of a judgment that had led to a life sentence. However, that possibility did not occur in the thirty two years between the 1976 increase in the size of the Court and the 2008 amendment to § 2115.

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) 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), where the appellant has failed to file the required brief within 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 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 of 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 petitons to allow full appellate review pursuant to M.R. App. P. 19, 20 or 23.

RULE 12A
Advisory Notes – July 2006

Rule 12A is added to the Maine Rules of Appellate Procedure to govern operations of the office of the Clerk of the Law Court. M.R. App. P. 12A(a) is developed from similar provisions of M.R. Civ. P. 77 that governs operations of the offices of the clerks of the trial courts. M.R. App. P. 12A(a)(1) is similar to M.R. Civ. P. 77(c). It establishes that all papers required to be filed with the Law Court or any justice of the Law Court must be filed with the Clerk of the Law Court. It then designates the proper office address for filing papers with the Clerk of the Law Court.

Filings using the United States Postal Service should be directed to the post office box. Filings relying on personal delivery or other delivery services should be addressed to the Newbury Street address.

The office of the Clerk of the Law Court is located on the first floor of the new section of the Cumberland County Courthouse. Another place for filing may be designated, but such would occur only in special circumstances based on an order of the Chief Justice. The office of the Clerk of the Law Court is open and available to receive filings during normal business hours as designated by the Chief Justice. Presently those hours are from 8:00 a.m. to 4:00 p.m., although there may be time during those hours when the office is closed due to shortage of staff. The office is not open on Saturdays, Sundays, legal holidays and other days designated by the Chief Justice.

M.R. App. P. 12A(a)(2) addresses after-hours filings and is similar to M.R. Civ. P. 5(g) and 77(a). Essentially, the Clerk of the Law Court and the office of the Clerk of the Law Court is prohibited from receiving after-hours filings or filings for other courts unless authorized to do so in specific instances by a Justice of the Law Court. Documents filed or attempted to be filed after-hours will be date stamped and deemed to be filed on the next regular business day.

M.R. App. P. 12A(a)(3) addresses fax filings by incorporating M.R. Civ. P. 5(j) by reference. This rule prohibits fax filings except in certain very limited instances. Fax filings are also covered by Administrative Order JB-05-12.

M.R. App. P. 12A(a)(4) prohibits electronic filings. It is similar to M.R. Civ. P. 5(k) incorporating an electronic filing prohibition into the Civil Rules. However, M.R. App. P. 12A(a)(4) then includes a provision, not included in the Civil Rules, that encourages voluntary electronic filing of briefs and appendices. The voluntary electronic filing is encouraged only when a document has been prepared electronically and it is possible for the party filing the document to submit an electronic copy of the document along with the paper copy for use by the Law Court in preparing and reviewing the case. However, even when there is voluntary electronic filing of a copy of a brief or an appendix, this filing is in addition to and not in replacement of the paper copies that are required to be filed by the rules. Compliance with the filing requirements of the rules can only be achieved by filing the requisite numbers of paper copies in the proper form with the Clerk of the Law Court.

M.R. App. 12A(b) is adopted to give the Clerk of the Law Court authority to act for the Court regarding certain routine matters that now must be acted on by a Justice of the Law Court. Subparagraph (b)(1)(A) allows the Clerk to grant extensions or enlargements of time for filing a brief, appendix, memorandum or petition when no party objects to the requested extension and the enlargement of time requested is 21 days or less. Extensions or enlargements of time exceeding 21 days may not be granted. The Clerk of the Law Court does not have authority to extend the time for filing any notice of appeal pursuant to M.R. App. P. 2 or to extend the time specified for filing any motion for reconsideration or other motion governed by M.R. App. P. 14.

M.R. App. P. 12A(b)(1)(B) authorizes the Clerk of the Law Court, with the agreement of the parties, to consolidate appeals involving the same parties.

Subsection (b)(2) authorizes the Clerk of the Law Court to dismiss appeals where an appellant has failed to file the required brief within the time limits specified by M.R. App. P. 7(b) and, additionally, the appellant has not responded, within 10 days, to a notice from the Clerk of the Law Court that the brief has not been timely filed.

Subsection (b)(3) authorizes the Clerk of the Law Court to dismiss sentence review proceedings pursuant to M.R. App. P. 20 when, upon review, it is apparent

that the sentence sought to be challenged on appeal is less than one-year of incarceration, the minimum sentence from which a sentence appeal is authorized by 15 M.R.S.A. § 2151.

The concluding paragraph of subsection (b) indicates that any party who seeks to review an order entered by the Clerk of the Law Court in accordance with subsection (b) may request a review of the Clerk of the Law Court's order by a single Justice of the Law Court. Review is allowed only if the party seeking review files the motion pursuant to M.R. App. P. 10(b) within 7 days of the entry of the order of the Clerk of the Law Court from which review is sought.

Advisory Note [January, 2008]

This amendment [to Rule 12A] authorizes the Clerk of the Law Court to sign orders that reflect the Court's actions granting or denying motions for reconsideration and petitions to allow full appellate review of discretionary appeals regarding post-conviction and post-sentencing reviews, sentencing appeals and worker's compensation appeals. The Clerk could only act with Court approval after Court review as authorized by statute or rule.

Advisory Notes- August 1, 2009

The amendment to Rule 12A(b)(1)(A) authorizes the Clerk of the Law Court to enlarge the time for filing a brief or appendix for up to seven days upon request. The Clerk's authority under this Rule was primarily utilized to extend the time for filing briefs. With the extended briefing schedules and concurrent restrictions on obtaining extensions of time to file briefs adopted in Rule 7(b), the Clerk's authority to grant extensions for 21 days from filing deadlines for briefs and some motions is eliminated.

Advisory Note – July 2012

Rule 12A(a)(4) is amended to be consistent with new rule 7(c)(2). It makes clear that the rules do in places encourage or permit electronic filings, but that electronic filings are never acceptable as substitutes for printed copies. Rule 7(c)(2) requires that any electronic copies be filed by email and replaces the deleted provisions of Rule 12A(a)(4) that allowed the filings by CD and not by electronic transmission of data.

Advisory Note – October 2012

The amendment [to Rule 12A(a)(1)] recognizes the new address for the Law Court Clerk's Office.

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, shall be available for public inspection and copying, except that any documents that were transmitted to the Law Court by the trial court and any documents identifying parties and witnesses 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; or any proceeding in which a document that is confidential by statute 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).

(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.

RULE 12B
Advisory Notes – July 1, 2010

Rule 12B is adopted to clarify for litigants and the public the extent to which oral arguments are public and records held by the Clerk of the Law Court are available for inspection and copying. Counsel and parties must be aware that filings that the parties make in the Law Court, including copies of any documents that were also filed in the trial court, are generally available to the public without limitation.

Subdivision (a) provides that any materials that are transmitted by the trial court to the Law Court retain their public or confidential status while in the possession of the Law Court.

Subdivision (b) provides that the Law Court file in appeals, other than appeals from child protection proceedings, is available to the public, except that documents transmitted *by the trial court* to the Law Court, and documents identifying and providing personal information about parties and witnesses maintain their public or confidential status in the Law Court. Any document filed with the Law Court by a party is available to the public when it becomes part of the court record and is confidential there. This subdivision is intended to protect from public inspection the docket sheets, transcript order forms, and notices of appeal in cases with statutory confidentiality requirements, including child protection, adoption, and guardianship proceedings; and presentence investigation reports filed as part of Sentence Review Panel appeals; and other documents entitled to statutory confidentiality that are transmitted by the trial court to the Law Court.

Subdivision (c) provides that briefs are available to the public without limitation in appeals other than appeals from child protection proceedings.

Subdivision (d) provides that the appendix in an appeal is available to the public except in adoption, guardianship, child protection, and some juvenile proceedings; in any proceeding involving the care, custody or support of a minor child; and in any appeal in which the appendix contains a document that is confidential as part of the trial court record. An appellant or appellee should conspicuously label the appendix as confidential if it contains a document that is

confidential by law, except in child protection, guardianship, adoption, and juvenile cases, when it is clear from the type of case that the appendix is confidential.

Subdivision (e) states that oral arguments of appeals are public.

Subdivision (f) states that Law Court opinions in appeals and decisions of single justices are public information.

If a party wishes to maintain the confidentiality of information that is otherwise public under this rule, the party may move to seal the information pursuant to Rule 14(c).

The confidentiality of information in a trial court record is determined by applicable statute, rule, or administrative order.

RULE 13. COSTS AND INTEREST ON JUDGMENTS IN CIVIL CASES

(a) To Whom Costs Are Allowed. 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. Costs shall be taxed against the unsuccessful party unless the Law Court otherwise directs. 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.

(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.

RULE 13
Advisory Notes – January 1, 2001

Rule 13, which governs award of costs and interest on judgment in civil cases, is identical to present M.R. Civ. P. 76, except that provision for $2.50 for a second attorney is eliminated.

Advisory Notes – September 10, 2001

The amendment to subdivision (f) changes the heading to more correctly identify the subject of M.R. App. P. 13(f).

Advisory Note – November 2011

This amendment changes the process for imposition of sanctions, reflecting the evolution of modern practice to allow notice and opportunity to be heard before sanctions are imposed. Thus, Rule 13(f) now provides that a party to the appeal may file a separate motion requesting sanctions, or the court may issue a notice or an order to show cause indicating that the court may consider sanctions, and the party or attorney at whom the motion or notice has been directed will be afforded a

reasonable opportunity to respond. The Rule does not specify the method of response, which will be left to the discretion of the Court. When a party requests sanctions, the request for sanctions must be presented by a separate motion. As the Advisory Committee to the changes in the Federal Rules noted regarding 1994 amendments to Fed. R. App. P. 38:

> A separately filed motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion.

The Rule is also amended to clarify that it may be applied to conduct occurring at oral argument and to any contumacious conduct.

Advisory Note – October 2012

The amendment [to Rule 13(c)] makes the reference to "a reporter" consistent with the definition in Rule 16(4).

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

(a) Issuance of Mandate.

(1) *Criminal Cases.* The mandate of the Law Court in a criminal case shall issue promptly after decision.

(2) *Civil Cases.* The mandate of the Law Court in a civil case 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. The timely filing of a motion for reconsideration in a civil case will stay the mandate

until disposition of the motion unless otherwise ordered by the Law Court. The issuance of the mandate 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. 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. 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 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. An original and seven copies of the motion and any supporting papers shall be filed and shall conform to Rule 9(f). 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. 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 are still 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 reargument or 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.

RULE 14
Advisory Notes – January 1, 2001

Rule 14(a)(1) relating to issuance of the mandate in criminal cases does not have a comparable provision in the criminal rules. The results of issuance of a mandate are addressed inferentially in M.R. Crim. P. 38(b), but there is no specific direction to issue the mandate promptly after decision at any point in the rules. Thus, Rule 14(a)(1) is a new provision. However, it does reflect current practice where, in criminal cases, the mandate issues promptly after decision.

Rule 14(a)(2) applies to civil cases and is nearly identical to the language in present M.R. Civ. P. 76A(a).

Rule 14(b) governs practice regarding motions for reconsideration. It is based on M.R. Civ. P. 76A(b). There is no comparable provision in the criminal rules. However, subdivision (b) applies to both criminal and civil cases. As a matter of practice, motions for reconsideration are frequently filed in criminal cases. However, they are not presently subject to any particular time limit. Under the new rules, motions for reconsideration in criminal cases would be subject to the same 14-day time limit as currently applied in civil cases.

Rule 14(c) relating to suspension of the rules is nearly identical to M.R. Civ. P. 75A(c). There is no comparable provision in the criminal rules. However, it appears appropriate to apply these provisions to both criminal and civil cases as such application appears to reflect current practice.

Advisory Notes – July 2008

The amendment to M.R. App. P. 14(b)(1) adds a reference to the already existing requirement of the Court Fees Schedule that a motion for reconsideration be accompanied by a filing fee. The reference is intended to avoid confusion that has resulted in filing motions for reconsideration because the fee payment requirement was not stated in the Rule.

The amendment also clarifies the third sentence by removing the confusing reference to “opinion” and adding the word “asserts” so that the sentence is clearer.

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 15
Advisory Notes – January 1, 2001

Rule 15 applies the time computation provisions of Rule 6(a) of the Maine Rules of Civil Procedure to time computations under these rules. The text is not restated, so that there is no risk of inconsistency should the text of M.R. Civ. P. 6 change.

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.

RULE 16
Advisory Notes – September 10, 2001

The definitions in proposed Rule 16 are derived from the definitions in M.R. Civ. P. 83. The principal change in the definitions is that the definitions do not include a definition for the "clerk." *See* M.R. Civ. P. 83(2). Within the appellate rules, the Clerk of the Law Court is usually referred to as the Clerk of the Law

Court, other references to clerk are usually references to the clerk of the appropriate trial court. Such references are easily determinable from the context of the rule but could be confused by a limiting definition. The term "reporter" is also defined in Rule 5(a). The other significant changes from Rule 83 are: (a) the definition of the word "court" is expanded to include reference to judges of probate; and (b) the definition indicating that references to parties or attorneys are interchangeable regardless of whether a party is represented or not is expanded by the references in subparagraph (1) to appellant and appellee.

Advisory Notes – July 1, 2010

The amendment to Rule 16(2) clarifies that, unless the context requires otherwise, state administrative agencies from which there is a direct appeal to the Law Court are treated as if the agency was the trial court for purpose of application of these rules. The chief administrative executive of the agency would be treated as if that person were the clerk of the trial court.

RULE 17 & 18 – RESERVED

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(1);

(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 eight (8) copies 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.

Until the Law Court rules on the request for a certificate of probable cause, no further briefing pursuant to M.R. App. P. 9 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 of 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. 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 days of 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. 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).

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

(g) Additional Transcript Orders. 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). Costs of the transcript shall be paid in accordance with M.R. App. P. 5(b)(1). 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), the Clerk of the Law Court shall be notified in accordance with M.R. App. P. 5(b)(2)(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.

RULE 19
Advisory Notes – October 15, 2001

Rule 19 of the Maine Rules of Appellate Procedure is adopted to consolidate the rules governing discretionary appeals to the Law Court from various orders in criminal cases, which previously were governed by a number of provisions in the Maine Rules of Criminal Procedure. The only exception among discretionary appeals is sentence appeals, which, because of their significantly different nature, are addressed in new Rule 20 of the Maine Rules of Appellate Procedure. The discretionary appeals consolidated into Rule 19 include:

— Appeal from orders on motions to correct or reduce a sentence in the Superior Court pursuant to M.R. Crim. P. 35(a) or (c), where the appeal is taken by the defendant. The rule is limited to appeals of Superior Court orders, as appeals of District Court rulings pursuant to M.R. Crim. P. 35 must be taken to the Superior Court pursuant to M.R. Crim. P. 36. Also, the rule only addresses M.R. Crim. P. 35 appeals by defendants, as the State has an appeal as of right from any adverse ruling pursuant to M.R. Crim. P. 35. *See* 15 M.R.S.A. § 2115–A(2-A) & (2-B). M.R. Crim. P. 35 appeals to the Law Court were formerly addressed by M.R. Crim. P. 37C, 37D, and 37E.

— Appeal from Superior Court orders revoking probation. District Court probation revocation orders may only be appealed to the Superior Court pursuant to M.R. Crim. P. 36. Probation revocation appeals were formerly addressed by M.R. Crim. P. 37F, 37G and 37H.

— Appeal from final judgment in post-conviction relief matters where the appeal is taken by the petitioner. As with appeals from orders for correction or reduction of sentence under M.R. Crim. P. 35, the State has a right of appeal, which is non-discretionary, from an adverse order in a post-conviction review proceeding. These provisions replace M.R. Crim. P. 76, 77, and 78 which have governed appeals of post-conviction review orders by petitioners.

— Appeal from final judgments in extradition proceedings, again where the appeal is taken by the person subject to the extradition order. The State has an appeal as of right in such matters. The rules governing extradition proceedings replace M.R. Crim. P. 88, 89, and 90 which have governed appeals in extradition proceedings.

— Appeal from orders on motions to order DNA analysis or orders on motions for new trials based on DNA analysis. These matters are new discretionary appeals enacted as part of legislation governing use of DNA analysis relating to completed cases, 15 M.R.S.A. §§ 2136-2138, which was adopted by P.L. 2001, ch. 469, § 1. Amendments to the Maine Rules of Criminal Procedure addressing the consideration and testing process where requests for DNA testing are made are being adopted concurrently with this rule. *See* M.R. Crim. P. 95-99. Because this is a new area of discretionary appeals, no present provisions of the Maine Rules of Criminal Procedure are being replaced for these DNA related discretionary appeals.

Rule 19(b) indicates that, except where explicitly addressed in Rule 19, practice for discretionary appeals is in accordance with the Maine Rules of Appellate Procedure. Thus, for example, notices of appeal challenging orders must be filed within 21 days after entry of the challenged order, M.R. App. P. 2(b)(2)(A), except for extradition cases in which case the notice of appeal must be filed within 10 days after entry of the challenged order. M.R. App. P. 2(b)(2)(B).

Rule 19(c) requires that, for discretionary appeals, the party filing the appeal must file with the Clerk of the Law Court 7 copies of a memorandum giving specific and substantive reasons why the issues identified for appeal warrant the issuance of a certificate of probable cause authorizing consideration of the appeal on the merits by the Law Court. The 7 copies of the memorandum must be filed with the Clerk of the Law Court within 21 days after filing of the notice of appeal. The memorandum is limited to 20 pages in length and must conform to the requirements of M.R. App. P. 9(f) relating to the form of briefs. On motion and a showing of good cause, the Law Court may allow additional time to file a memorandum.

As with present practice, no responding memorandum is to be filed by the State. Except for the memorandum filed by the defendant or the petitioning party, no further briefing and no appendix is required until the Law Court rules on the request for a certificate of probable cause.

Rule 19(d) addresses what transcripts may be prepared to support discretionary appeals. Subdivision (d) provides that, unless the Law Court otherwise orders, the court reporter must prepare and file a transcript of the hearing that is the subject of the discretionary appeal within 56 days of receipt of a copy of the notice of appeal and transcript order form. Obviously, such a transcript must be prepared only if a hearing on the matter at issue was held and recorded. No

other transcripts are to be prepared until after a ruling on the request for a certificate of probable cause. The hearings for which a transcript is to be prepared unless the Law Court orders otherwise are explicitly listed in the rule in subparagraphs (i) through (v) of paragraph (d)(1).

As indicated in paragraph (d)(2), no transcript is to be prepared of any extradition hearing. This is specified because of the accelerated consideration that such appeals receive. In lieu of a transcript, the judge of the District Court that heard the extradition proceeding must, within 10 days of filing 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. The District Court Judge may, in lieu of preparing findings of fact, order that a transcript of all or part of the proceedings be prepared and transmitted to the Law Court. However, such an order may only be entered if the District Court finds that special circumstances exist and details in writing the special circumstances that justify the ordering of a transcript.

Compensation for all transcripts prepared pursuant to subdivision (d) shall be as provided in M.R. App. P. 5(b)(1).

Rule 19(e) provides that, if the Law Court denies a certificate of probable cause, the Clerk of the Law Court is to send each party a written notice of the denial.

Rule 19(f) provides that if the Law Court issues a certificate of probable cause authorizing consideration of the appeal on the merits, the Clerk is to notify both the parties to the appeal and the trial court from which the appeal was taken. For purposes of timing of the applicability of the Maine Rules of Appellate Procedure to Rule 19 appeals, the docketing in the Law Court of the order granting a certificate of probable cause is to be treated in the same manner as the filing of a notice of appeal pursuant to M.R. App. P. 2(b)2. However, if an appeal under M.R. App. P. 2 involving the same criminal judgment is already pending, the Rule 19 appeal is to be consolidated with and treated as part of the already pending M.R. App. P. 2 appeal.

Rule 19(g) governs the procedure for ordering additional transcripts beyond the transcript already prepared pursuant to Rule 19(d). In some cases, transcripts of other portions of the proceedings, which are needed for the appeal may already exist as part of the file. In such cases, those transcript may be forwarded and copied as necessary to comply with the requirements of the Maine Rules of Appellate Procedure. If new transcripts must be ordered, then, within 7 days after

docketing by the Clerk of the Law Court of the order granting the certificate of probable cause, the appellant must file with the reporter and the Clerk of the Law Court and serve on the appellee a transcript order for any additional transcripts that the appellant deems necessary for prosecution of the appeal. After receipt of the appellant's transcript order, the appellee—usually the State—may order additional transcripts. The orders and costs regarding the transcript are to be addressed in the same manner as provided in M.R. App. P. 5(b)(1). Non-indigent appellants must make appropriate payment arrangements with the reporters regarding the transcript or the order may be canceled and the appeal will proceed without a transcript.

Rule 19(h) provides that the Clerk's record, after docketing of the order granting the certificate of probable cause, is to be filed with the Law Court in the same manner as provided in M.R. App. P. 6.

Rule 19(i) specifies that the briefing schedule is set upon filing of the record and any ordered transcripts in the same manner as under M.R. App. P. 7. From that point forward, the appeal proceeds in the same manner as any other appeal under the Maine Rules of Appellate Procedure.

Advisory Notes – August, 2004

This amendment to M.R. App. P. 19(a) and (d)(1) adds a discretionary appeal unintentionally omitted when discretionary appeals were consolidated into Rule 19 in 2002, and adds two new discretionary appeals enacted by the 121st Maine Legislature during the Second Special Session (P.L. 2004, ch. 711, § A–19). The three added discretionary appeals are:

Appeal from Superior Court rulings revoking supervised release. This is not a new discretionary appeal, having been enacted as part of supervised release for sex offenders, 17-A M.R.S.A. ch. 50 [§§ 1231-1233], by P.L. 1999, ch. 788, § 7. District Court supervised release revocation orders may only be appealed to the Superior Court pursuant to 17-A M.R.S.A. § 1233. Rules 36 and 36A of the Maine Rules of Criminal Procedure are being amended concurrently with this rule to specifically include a section 1233 appeal to the Superior Court.

Appeal from District Court or Superior Court findings of inexcusable failure to comply with court-imposed deferment requirements. This new discretionary appeal was enacted as part of the new sentencing alternative of deferred disposition, 17-A M.R.S.A. ch. 54-F [§§ 1348 to 1348-C], by P.L. 2004, ch. 711, § A-19.

Appeal from Superior Court rulings revoking administrative release. This new discretionary appeal was enacted as part of the new sentencing alternative of administrative release, 17-A M.R.S.A. ch. 54-G [§§ 1349 to 1349–F], by P.L. 2004, ch. 711, § A-19. District Court administrative release revocation orders may only be appealed to the Superior Court pursuant to 17-A M.R.S.A. § 1349-F. Rules 36 and 36A of the Maine Rules of Criminal Procedure are being amended concurrently with this rule to specifically include a section 1349-F appeal to the Superior Court.

Advisory Note – February 2010

M.R.App.P. 19(a) and (d)(1). The amendments add to Rule 19 two new discretionary appeals found in 15 M.R.S. § 2184(1) enacted in the 2009 First Regular Session of the 124th Maine State Legislature (P.L. 2009, ch. 308, § 1, effective September 12, 2009) as part of a new statutory post-judgment relief mechanism for persons whose identity has been stolen and falsely used by another person in, as relevant here, a criminal proceeding. The first of the discretionary appeals provides for a conditional appeal by a person whose post-judgment motion seeking a court determination of factual innocence and correction of court records and related criminal justice records has been denied following the hearing required pursuant to 15 M.R.S. § 2183(5). The second of the discretionary appeals provides for a conditional appeal by that person in the event the court subsequently vacates its earlier order granting the person's motion (or on whose behalf such motion was filed) based upon a finding of fraud or misrepresentation pursuant to 15 M.R.S. § 2183(7).

The amendment also changes the references to M.R.S.A. in the amended sections to references to M.R.S., as M.R.S. is now the primary Maine statutory reference used by the courts.

Advisory Note – July 1, 2010

The amendment to Rule 19(c) changes the filing date for the memorandum in support of the appellant's request for a certificate of probable cause in criminal discretionary appeals. Many appellants move to enlarge the time for their memoranda in order to be able to review the transcript before filing the memoranda. The Court does not review the memorandum until after the transcript is filed. The amendment changes the time for the filing of the memorandum to allow the appellant to receive and review the transcript before filing the memorandum. In cases when no transcript is ordered, the memorandum remains

due 21 days after the notice of appeal is filed. The amendment also provides for 8 copies of the memorandum to be filed, so that one copy may be retained by the Clerk's Office and the remaining seven distributed to the Court.

Advisory Note – November 2011

Rules 19(a) and (d)(1) are amended to reflect statutory changes made to 15 M.R.S. §§ 2138(6) and (11) in the First Regular Session of the 125th Maine State Legislature, P.L. 2011, ch. 230, §§ 1, 2 (effective Sept. 28, 2011). Title 15 M.R.S. § 2138(6) as amended provides to the state a discretionary appeal from a court order granting a motion to order DNA analysis. Previously the state could not appeal from such an order. Title 15 M.R.S. § 2138(11) as amended provides to an aggrieved person an appeal as of right from a court decision denying a new trial. Previously the person's appeal was discretionary.

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

Advisory Note – July 2016

Rule 19 is amended in the following respects.

(1) Rule 19(a) is amended to add numbers for each separate appeal addressed and have those numbers correspond to the existing amended numbers in Rule 19(d)(1). The numbering and organization in Rule 19(d) is altered to (1) add a reference to extradition appeals, (2) add letters to the similarly numbered record choices for factual innocence appeals, and (3) add a reference for the record of criminal history record appeals.

(2) Rule 19(a) is amended to change the words "criminal appeals, which are subject to preliminary review" to "those criminal appeals that are subject to preliminary review."

(3) Rule 19(a) is amended to correct the statutory reference addressing an appeal by a person whose probation is revoked to reflect new 17-A M.R.S. § 1207(1), enacted by P.L. 2015, ch. 431, § 41 (effective July 29, 2016).

(4) In Rule 19(a), the words "by the Superior Court, but not by the District Court," are omitted. The Superior Court is no longer hearing appeals from the District Court. The Supreme Judicial Court has taken over that function in the form of a discretionary appeal. See M.R.U. Crim. P. 36.

(5) In Rule 19(a), the citation to former "M.R. Crim. P. 35(a) or (c)" is replaced by a cite to "M.R.U. Crim. P. 35(a) or (c)."

(6) In Rule 19(a)(iv) and (d)(1)(iv), the term "deferment" is changed to "deferred disposition."

(7) In Rule 19(a), the statutory reference to "15 M.R.S. § 210-A" is corrected to reflect current 15 M.R.S. § 210-B(1).

(8) In Rule 19(a), the provision regarding appeal from an order on a motion to order DNA analysis is reworded for clarity. The words "when the appeal is taken either by the convicted person or the State" are replaced with, "when the appeal is taken by the convicted person or by the State."

(9) Rule 19(a) and 19(d)(1) are amended to account for a new discretionary appeal to the Law Court, which now exists pursuant to 15 M.R.S. § 2258(1), enacted by P.L. 2015, ch. 354, §1 (effective October 15, 2015, but with a sunset of October 1, 2019). That statute creates a discretionary appeal procedure from a judgment in a proceeding where a person seeks a court determination that he or she has satisfied the statutory prerequisites specified in 15 M.R.S. § 2252 that allow restrictions on the dissemination and use of criminal history record information relating to a criminal conviction, *see* 15 M.R.S. §§ 2254(5), 2255, or from a subsequent judgment that the person has been convicted of a new crime and is therefore no longer eligible for such restrictions, *see* 15 M.R.S. §§ 2254(7), 2255.

(10) Rule 19(d)(1) is amended to omit the words "by the Superior Court" because of the institution of the Unified Criminal Docket statewide.

(11) Rule 19(d)(2) is amended to change references to the judge of the District Court to the "justice or judge" and the "trial court" because of the institution of the Unified Criminal Docket statewide.

(12) Rule 19(f) is amended to correct a typographical error.

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 application shall be signed by the defendant or the defendant's attorney. 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 under 15 M.R.S. § 2151 is qualified to seek sentence review, the defendant shall be advised of the right to seek sentence review. If a defendant not represented by counsel 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).

(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 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 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 of 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 make application for an extension as provided in M.R. App. P. 6(c).

(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). 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 of notice that leave to appeal has been granted. If an

appeal is pending under the M.R. App. P. 2 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.

RULE 20
Advisory Notes – October 15, 2001

The discretionary sentence review process governs appeal of sentences of one-year or more where the defendant claims that the sentence is excessive or inappropriate. *State v. Ricker*, 2001 ME 76, ¶ 18, 770 A.2d 1021, 1026-27. A sentence of any length may be appealed as a matter of right where the defendant claims that the sentence is illegal, imposed in an illegal manner or beyond the jurisdiction of the court, where the illegality appears plainly in the record. *Id.*, *State v. White*, 2001 ME 65, ¶ 3, 769 A.2d 827, 828; *State v. Cunningham*, 1998 ME 167, ¶ 5, 715 A.2d 156, 157.

Rule 20 of the Maine Rules of Appellate Procedure governs discretionary appeals of sentences of one-year or more addressed in 15 M.R.S.A. §§ 2151-2157. Rule 20 replaces M.R. Crim. P. 40, 40A, 40B and 40C. Persons who may seek sentence reviews pursuant to Rule 20 are persons who have been sentenced to a sentence of one-year or more, where the sentence is not mandatory and not a sentence by agreement in accordance with M.R. Crim. P. 11A.

The application for appeal of sentence must be filed within 21 days of entry of the sentencing order. M.R. App. P. 20(b).

Practitioners should note that sentence appeals are distinct from appeals from convictions. If an individual is convicted and that individual wishes to appeal both the conviction and the sentence then: (1) to appeal the conviction, a notice of appeal must be filed in accordance with M.R. App. P. 2(b)(2)(A); and (2) to appeal the sentence, the application to allow an appeal of sentence must be filed under M.R. App. P. 20. A discretionary sentence appeal is not automatically considered as part of an appeal of a conviction. The Law Court must still engage in its discretionary choice as to whether an allow of a sentence appeal.

If the application to allow an appeal of sentence is granted by the Sentence Review Panel and an appeal of the conviction is also pending, the sentence appeal

will be consolidated with the conviction appeal for consideration. If there is no conviction appeal pending, the merits of the sentencing appeal will be considered independently by the Law Court. If an application to allow an appeal of sentence is denied by the Law Court, the sentence appeal shall not proceed, and the denial of the application is final and subject to no further review. 15 M.R.S.A. § 2152, M.R. App. P. 20(f).

The application for review of sentence must conform to the Judicial Branch form for sentence appeals. M.R. App. P. 20(a)(2). It must be signed by the defendant or the defendant's attorney. The application must be filed with the clerk of the court in which the sentence is imposed. The clerk will then mail a date stamped copy of the application to the court reporter.

When a court imposes a sentence for which a defendant is qualified to seek sentence review, the defendant must be advised of the right to seek a sentence review. M.R. App. P. 20(a)(3). If a defendant is not represented by counsel, and requests the Court to do so, the Court must cause an application for review of sentence to be prepared and filed on behalf of the defendant.

Rule 20(c) covers docketing of the sentence appeal in the trial court and the Law Court. The rule also specifies the materials that the clerk of the trial court is to forward to the Law Court in cases where a sentence appeal is filed. As provided in 15 M.R.S.A. § 2157, a sentence may not be stayed, and bail may not be set pending a sentence review. Thus, setting of bail or a stay of execution of sentence is only appropriate in circumstances where an appeal of the conviction is filed and a stay of sentence or bail request is considered pursuant to M.R. Crim. P. 38 in connection with the appeal of the conviction, not the sentence appeal.

Rule 20(d) provides that preparation of the sentencing transcript is to receive expedited consideration, with the court reporter required to prepare the transcript within 42 days from receipt of the application for sentence review. This differs from the 56 days which reporters are usually given to prepare appeal transcripts. *See* M.R. App. P. 6(c). Reporters may request extensions of time in appropriate circumstances.

Rule 20(e) addresses correction or modification of the record. It basically incorporates the provisions of M.R. App. P. 5(e), except that it allows either the Sentence Review Panel or the Law Court, on its own, to request the filing of a supplemental record if the Court determines that there are additional portions of the record that may aid its review of the sentence.

Rule 20(f) addresses denial of the application for leave to appeal sentence, noting it is final and not subject to further review. 15 M.R.S.A. § 2152.

Rule 20(g) specifies that, where the Sentence Review Panel grants an application to allow appeal of sentence, the Clerk of the Law Court must promptly send to the clerk of the trial court in which the sentence was imposed a copy of the order granting the application. A copy of the order would also be sent to each party together with a written notice of the Law Court docket number and the date within which any further record on appeal must be filed.

After the application for leave to appeal is granted, the order granting leave is treated like a notice of appeal. Rule 20(h) specifies that the appeal shall proceed in the same manner as any other appeal under the Maine Rules of Appellate Procedure, except that any party desiring transcripts of the proceeding which are not already in the file must file an additional transcript order within 7 days of the notice that leave to appeal has been granted. If an appeal of the conviction is already pending under M.R. App. P. 2, the sentence appeal would be consolidated with that appeal under the same Law Court docket number.

Rule 20(i) provides that where the Law Court grants a sentence appeal and remands a case for further proceedings and resentencing, any justice or judge of the court to which the matter is remanded may act on the remanded matter unless the Law Court otherwise directs.

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

All references to the Maine Revised Statutes Annotated in the Maine Rules of Appellate Procedure are updated to refer to the Maine Revised Statutes.

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; provided that if 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, the written approval may be filed at a later date.

(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.

RULE 21
Advisory Notes – January 1, 2001

Rule 21 is nearly identical, except for some technical word changes, to M.R. Crim. P. 37B. It is amended to recognize that Attorney General approval is not needed for State appeals from post-conviction judgments.

Advisory Note – October 15, 2001

M.R. App. P. 21(b) is being amended to recognize that M.R. Crim. P. 76, presently referenced in M.R. App. P. 21(b) is being abrogated by these rules. The amendment does not change the present practice that State appeals of post-conviction review orders need not be approved by the Attorney General. Such appeals may still proceed on initiative of a District Attorney's office, without approval of the Attorney General. The amendment of the rule recognizes that Rule 21 governs State initiated appeals which do require approval of the Attorney General.

Advisory Note – August 2015

Because of the adoption of the Maine Rules of Unified Criminal Procedure, effective throughout the State of Maine as of July 1, 2015, all references and citations to the Maine Rules of Criminal Procedure have been replaced with references and citations to the Maine Rules of Unified Criminal Procedure.

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

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

(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).

RULE 22
Advisory Notes – January 1, 2001

Rule 22 relating to review of rulings by the Public Utilities Commission is identical to M.R. Civ. P. 73(h).

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

(a) When and How Taken. 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 party in interest shall also pay to the Clerk of the Law Court the required filing fee. The petitioner shall file with the copy of the decision a notice of appeal indicating the points intended to be addressed on appeal. Any other party in interest may, 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, file a notice of appeal indicating any other point they may wish to address in an appeal.

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.* 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). The petition for appellate review and any response shall be typed in at least 12-point type with double spacing between each line of type except for quotations. Both the petition and response 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 cleanly 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 a copy of the challenged decision of the Appellate Division or the Workers' Compensation Board to a petition for appellate review 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 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 of the filling 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.

RULE 23

Advisory Notes – January 1, 2001

Rule 23 relating to review of Workers' Compensation decisions is nearly identical to M.R. Civ. P. 73(i). The only significant differences are that the date for the appellant to file the record with the Law Court in paragraph 3(c)(1)(A) is changed from 40 to 35 days and the date for the Executive Director of the Workers' Compensation Board to file the record on appeal with the Clerk of the Law Court in paragraph 3(c)(2)(A) is changed from 10 to 14 days.

Advisory Notes – July 2003

These amendments to M.R. App. P. 23 are designed to more clearly define the criteria and practices the Law Court will apply in its consideration of petitions for appellate review of Workers' Compensation Board decisions. Authority for this rulemaking is provided by 4 M.R.S.A. § 8 and 39-A M.R.S.A. § 322(2). Section 322 gives only very general direction as to the nature of appeals that may be considered on petition, those being appeals that raise an "error or errors of law," § 322(1). The statute also directs that: "there may be no appeal upon findings of fact." § 322(3).

In spite of this statutory direction, many petitions for appellate review primarily seek review of fact-finding and many others seek to raise legal issues that are largely governed by precedent or statutory language. To save time and resources for parties contemplating appeals and the Court, these amendments more clearly identify the criteria for petitions for appellate review that may merit serious consideration of the case in the Court's discretionary decision to grant or deny appellate review on the merits. The amendments also clarify other practices that will be applied in considering appeals under M.R. App. P. 23.

The amendment to subdivision (a) specifies the appeal filing time limits directly in the Rule instead of referencing to the statute. The 20 days from notice limit for filing the notice of appeal and decision is taken from 39-A M.R.S.A. § 322(1). The time limit is based on receipt of notice rather than docketing due to the less formal docketing practices of administrative agencies. Under current practice, a letter often accompanies the initial filing of the decision to be appealed. The rule change requires a notice of appeal, indicating the anticipated points on appeal, similar to the civil notice of appeal addressed in M.R. App. 2(a)(2) and 5(b)(2)(A). As presently, a copy of the decision sought to be appealed must be filed with the notice of appeal.

The amendments to subdivision (a) also create an explicit procedure for cross-appeals to recognize current practice where cross-appeals regularly occur. A party intending to petition for a cross-appeal must file a notice of appeal indicating intended points on a cross-appeal within the later of the initial filing period or 14 days after the date of the filing of the first notice of appeal. Where there is more than one notice of appeal filed, the party first filing a notice of appeal is deemed to be the petitioner.

A petition for appellate review is a memorandum addressing why the Law Court should consider the merits of an appeal.

Under subdivision (b)(1), the petitions for appellate review filed by any party must be filed within 20 days after the later of the first notice of appeal or any subsequent and timely notice of appeal. This change may have the effect of extending, by up to 14 days, the statutory time for filing petitions for review. However, such an adjustment is necessary to accommodate responsible cross-appeal practice and may be adopted by the court pursuant to 4 M.R.S.A. § 8. Where possible, a party's petition in support of their appeal and response to any opposing appeal should be contained in a single 10-page document. The amendment to subdivision (b)(1) also adopts a minimum 12-point type size limit, similar to that applied to briefs, by M.R. App. P. 9(f).

By the amendments, subdivision (b) is divided into six numbered paragraphs.

Paragraph 1 discussed above, governs the basic form, content and timing for petitions for appellate review and indicates that such petitions should address the criteria stated in paragraph 2.

Paragraph 2 states the review criteria, which the Law Court will consider important if a petition is to be granted. Thus a petition for appellate review may be granted under (A) when the case cleanly 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. The emphasis in (A) is on important questions of interpretation of law or changes in interpretation of law that will have general significance in Workers' Compensation Law practice. The legal issue must be cleanly raised; meaning that procedural problems or fact-finding should not prevent reaching the legal issue directly.

Under (B) an appeal may be allowed when the decision on appeal indicates a significant error in application of a statute or precedent when the law as applied by the Board or a hearing officer is compared with the overall objectives and goals of the Workers' Compensation Law. Substantial prejudice to a party to the Board proceeding must also be demonstrated.

Subparagraph (C) looks to the procedures in a particular case. An appeal may be allowed under (C) if there has been a substantial and prejudicial violation

of the statutory or due process rights of one or more of the parties. A showing of actual prejudice would be critical to support consideration of any appeal based on a claimed procedural violation.

Paragraph 3, which reflects the terms of the current rule, emphasizes that, pursuant to § 322(3), the Court may not consider appeals contesting findings of fact.

The amendment to paragraph (b)(4) emphasizes present requirements that copies of the challenged decision and other relevant decisions must be attached to the petition for appellate review. Despite these requirements, there has been a significant problem with petitions being filed without requisite decisions attached. This requirement may be enforced more vigorously in the future, resulting in summary dismissal of petitions that do not have the challenged decisions attached. Attached decisions must include the particular decision from which the appeal is sought and any earlier decisions, which effect eligibility, benefit calculation, res judicata, or timeliness issues in the decision to be appealed.

The new subdivision (c)(1) reflects current practice that where an error is clear, upon facial review of a petition for appellate review and any other materials including the Board Decision, the Law Court may, on some occasions, summarily modify or vacate and remand, saving the parties the time and expense of a complete appeal process.

Except for being renumbered, subdivisions (c)(2) and (c)(3) are unchanged from subdivisions (c)(1) and (c)(2) in the current rule.

The new subdivision (c)(4) states that the Law Court may later dismiss an appeal that was originally allowed if it appears after briefing that the criteria for granting an appeal are no longer served by reaching the merits of the appeal and that the appeal was improvidently allowed. This may occur when (i) closer review of the case indicates procedural, fact-finding or case organization problems that prevent the Court from directly addressing the anticipated legal issue, (ii) subsequent developments in the case or related to the case render the legal issue moot or of lesser consequence than when the appeal was allowed, or (iii) the quality of the parties briefing of the issues indicates insufficient preparation or attention to the important legal matters originally presented in the appeal.

Workers' Compensation Law is a highly specialized area of law. Quality briefing of issues is vital to adequate appellate review. Briefing of the legal issues

after a petition for appellate review has been granted should address the procedural and factual history of the case, including any prior decisions or orders in the case that may have significance. The legal argument should consider, where relevant, several sources of authorities, including: (A) statutory language; (B) case law from Maine; (C) Board Rules; (D) legislative history of the statute at issue; (E) judicial opinions and statutes in other jurisdictions addressing the issue, if any; (F) workers' compensation law treatises; and (G) interpretations of similar statutory language by the former Workers' Compensation Commission Appellate Division, when particularly appropriate.

Advisory Note – August 2012

Effective September 1, 2012, the Workers' Compensation Act has been amended by P.L. 2011, ch. 647, §§ 19-21. The amendment creates an Appellate Division within the Workers' Compensation Board and requires that parties seeking to challenge a decision of a single Workers' Compensation Board Hearing Officer bring the appeal first to the Appellate Division. There is no longer the capacity to bring a direct, discretionary appeal to the Law Court from a decision of a single hearing officer. Appeals to the Law Court from the Appellate Division or the Workers' Compensation Board would continue to be brought as discretionary appeals according to the same discretionary review process as has existed in the recent past. The amendments to Rule 23 accommodate these statutory changes. It should also be noted that the last sentence in subdivision (a) of the present rule was duplicated in subdivision (b)(6). Accordingly, the sentence in subdivision (a) is eliminated.

The transition provision recognizes that there may be some appeals from hearing officer decisions published before September 1. The process that applied before adoption of these amendments would apply to appeals of such decisions. It would be anticipated that when a hearing officer issues a decision before September 1, but decides a motion to reconsider, a motion to amend, or a request for further findings after September 1, the new practice of appeal to the Appellate Division would govern appeals of such hearing officer rulings.

RULE 24
REPORT OF CASES

(a) Report by Agreement of Important or Doubtful Questions. The court may, where all parties appearing so agree, report any action in the trial court to the Law Court if it is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report, provided that the decision thereof would in at least one alternative finally dispose of the action.

(b) 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 under this rule shall be entered in the Law Court and heard and determined in the manner provided in case of appeals, 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.

RULE 24
Advisory Notes – January 1, 2001

Rule 24 relating to report of cases, tracks very closely M.R. Civ. P. 72 and M.R. Crim. P. 37A. In civil cases, the appeal fee must be paid "promptly" after entry of the order of report.

Subdivision (b), relating to report on agreed facts does not have a comparable provision in M.R. Crim. P. 37A. However, there appears no good reason not to make availability of a report on agreed facts equal for criminal and civil cases.

Advisory Notes - September 10, 2001

These amendments to subdivisions (a) and (b) clarify somewhat archaic language that was carried over from former M.R. Civ. P. 72(a) and (b).

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 which may be determinative of the cause and that there are no clear controlling precedents 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 style 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 between 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.

(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.

RULE 25
Advisory Notes – January 1, 2001

Rule 25 is identical to M.R. Civ. P. 76B. It establishes the structure for certification of questions of law from the Federal Courts to the Law Court. There is no comparable provision in the criminal rules, but there would appear to be no good reason why the authorization for certification of questions pursuant to 4 M.R.S.A. § 57 would not cover criminal cases. One would anticipate that certification of questions in criminal cases would be rare, but such could occur.