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**STATE OF MAINE  
SUPREME JUDICIAL COURT**

**MAINE RULES OF APPELLATE PROCEDURE**

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# **MAINE RULES OF APPELLATE PROCEDURE**

## **I. GENERAL APPEAL PROCEEDINGS**

### **RULE 1. SCOPE OF RULES**

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

The restyled Maine Rules of Appellate Procedure shall apply to all appeals in which the notice of appeal is filed on or after September 1, 2017.

### **RULE 1A. TIME COMPUTATION**

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

When the period of time prescribed or allowed is 6 days or fewer, intermediate Saturdays, Sundays, legal holidays, and days when, by order of the Chief Justice of the Supreme Judicial Court, pursuant to M.R.U. Crim. P. 54(b) or M.R. Civ. P. 77(c), the clerk's office is closed, shall be excluded in the computation. When the office of the Clerk of the Supreme Judicial Court is closed before 4:00 p.m. on any regular business day, a required filing shall be timely if filed on the next regular business day that the office is open for business.

### **RULE 1B. DEFINITIONS**

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

**(a)** 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.

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

**(c)** 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.

**(d)** The word “reporter” means a court reporter, the Office of Transcript Operations, or a transcriber of an electronically recorded record.

**(e)** The term “docket entries” shall include case information maintained by the trial court clerk in the registry of actions.

### **RULE 1C. SIGNATURES**

**(a) Form of signature.** Where a signature is required on any document filed with the Clerk of the Law Court, a person may sign the document by using one of the following methods:

- (1)** Physically signing the document;
- (2)** Embedding in the document an image of the person’s physical signature; or
- (3)** Typing “/s/” followed by the person’s name, all on the signature line.

**(b) Signature block to follow signature.** Every person who signs a document must include a signature block immediately below that person’s signature. A signature block must include the following:

- (1) The person's printed name;
- (2) The person's mailing address;
- (3) The person's email address, if any; and
- (4) If the person is an attorney,
  - (A) the attorney's Maine bar number,
  - (B) the attorney's law office or firm name, if any,
  - (C) the attorney's telephone number, and
  - (D) the name of each party on whose behalf the document is filed.

**(c) Effect of signature.** A person's signature on a document constitutes a representation that the document, together with any associated exhibits or other documents, is filed in good faith and conforms to the page or word limits and the form and formatting requirements of the applicable rule or rules.

**(d) Authenticity of signature.** The filing of a document constitutes a representation by the person actually filing the document that each signature on the document is authorized by the person whose signature it purports to be. If a party has a good-faith basis to believe that an image or typed signature was not authorized by the person whose signature appears on a document, the party challenging the signature may file a motion with the Court. If the Court determines that there is a substantial possibility that the signature was not authorized by the person whose signature it purports to be, the Court may strike the challenged document, direct that the challenged document be filed and served again with an original handwritten signature, or impose any other requirement it deems necessary.

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

**(a) Commencing Appeal.** Review of any criminal or civil judgment, order, or ruling of the District Court, the Superior Court, any Unified Criminal

Docket, the Probate Courts, or a single justice of the Supreme Judicial Court that is by law reviewable by the Law Court shall be by appeal.

**(b) Notice and Appearances.**

**(1) Notice.** The appeal shall be commenced by filing a notice of appeal with the clerk of the trial court from which the appeal is taken. A notice of appeal shall be filed in conformity with the rules then in effect for the trial court from which the appeal is taken. The notice of appeal shall be signed by each appellant or the appellant's attorney. The notice of appeal shall specify the party taking the appeal and designate the judgment or part thereof appealed from. A copy of the notice of appeal shall be served on the other parties to the trial court proceeding.

**(2) Appearances. (A) Criminal Appeals.** In criminal appeals, a member of the Maine bar or unrepresented party filing the notice of appeal shall be deemed to be representing the appellant unless new counsel appears or counsel withdraws pursuant to M.R.U. Crim. P. 44(a)(2) and 44B; and the member of the Maine bar or unrepresented party representing the appellee in the trial court at the time the appeal is filed shall be deemed to be representing the appellee unless new counsel appears or counsel withdraws pursuant to M.R.U. Crim. P. 44(a)(2) and 44B.

**(B) Civil Appeals.** In civil appeals, a member of the Maine bar or unrepresented party filing the notice of appeal shall be deemed to be representing the appellant unless new counsel appears or counsel withdraws. A member of the Maine bar representing a party who has not filed a notice of appeal in the trial court shall be deemed to be representing that party in the appeal unless new counsel appears, counsel withdraws, or the party elects not to participate in the appeal. An unrepresented party, other than the appellant, in the trial court proceeding at the time the appeal is filed shall be deemed to be appearing in the appeal unrepresented unless counsel appears or the party elects not to participate in the appeal.

**(C) Visiting attorneys.** A visiting attorney permitted to practice in the trial court pursuant to M.R. Civ. P. 89(b) or M.R.U. Crim. P. 55 may not appear in the Law Court without permission of the Law Court and payment of the designated fee. The provisions of M.R. Civ. P. 89(b) shall govern the appearances of visiting attorneys in the Law Court.

**(c) Filing Fee.**

**(1)** No filing fee is required for appeals in criminal cases. The required filing fee for appeals in civil cases shall be paid to the clerk of the trial court at the time of the filing of the notice of appeal, or pursuant to M.R.E.C.S. 39 if applicable in the trial court from which the appeal is taken.

**(2)** A person who believes that he or she cannot afford to pay the filing fee may file a request to have the fee waived pursuant to M.R. Civ. P. 91 and M.R.E.C.S. 39(B) if applicable in the trial court from which the appeal is taken. If the request to have the filing fee waived is denied, the party who sought the waiver shall pay the filing fee in full within 7 days after the entry of the order denying the request for waiver of the filing fee, or the appeal shall be dismissed by the trial court.

**(d) Transcript Order.** If an appellant intends to include any portions of the transcript in the record on appeal, that appellant must order those portions either by using the online transcript order form found on the Judicial Branch website, [www.courts.maine.gov/programs/oto/index.html](http://www.courts.maine.gov/programs/oto/index.html), or by using the official Judicial Branch paper order form.

**(1)** To use the online transcript order form on the Judicial Branch website, the appellant must

**(A)** complete all information required on the online form, including the dates of the proceedings that the appellant wishes to have transcribed;

**(B)** file the printed confirmation sheet with the notice of appeal; and

**(C)** serve a copy of the printed confirmation sheet on the other parties.

**(2)** To use the official Judicial Branch paper transcript order form, the appellant must

**(A)** complete all required information on the form, including the dates of the proceedings that the appellant wishes to have transcribed;

**(B)** sign the form;



- (C) file the original form with the notice of appeal; and
- (D) serve a copy of the form on the other parties.

**(e) Insufficient Filing.** If a notice of appeal or transcript order is not signed, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the provisions of M.R.E.C.S. 35(D)-(E) shall control if applicable in the trial court from which the appeal is taken. If the Maine Rules of Electronic Court Systems do not apply in the trial court, the trial court clerk shall docket the receipt and return of the non-accepted documents, and then return all documents to the party who filed them. Documents that are returned to the party who filed them shall not be deemed as filed for the purpose of calculating compliance with time limits.

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

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

**(2)** A notice of appeal filed by the State in a criminal case shall be accompanied by a written approval of the appeal signed by the Attorney General, pursuant to Rule 21(b), or a representation that the Attorney General has approved the appeal and a written approval will be filed within 7 days. The State shall serve a copy of the written approval on the other parties, in addition to the notice of appeal and transcript order form as required by Rules 2A(b) and (d). The clerk of the trial court shall file the approval, note the filing in the criminal docket, and mail a date-stamped copy of the approval to the defendant or, if the defendant is represented by counsel, to the attorney for the defendant. If the Maine Rules of Electronic Court Systems apply in the trial court, the clerk of the trial court need not take the actions set forth in the preceding sentence.

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

**(1)** The trial court clerk shall notify (A) the Clerk of the Law Court and (B) the court reporter or Office of Transcript Operations of the filing of the notice of appeal and transcript order form. The trial court clerk shall cause the notice of appeal and transcript order form to be transmitted to the attorney of record of each party other than the appellant, or, if a party is not represented by an attorney, then to the last known address of that party. This notification is sufficient notwithstanding the death or incapacity of the party or of the party's attorney prior to or subsequent to the mailing of the notification.

**(2)** Unless the notice of appeal and transcript order form are transmitted to the attorneys of record or parties not represented by an attorney pursuant to the Maine Rules of Electronic Court Systems, the clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing.

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

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

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

**(a) (1) Time of Entry of Judgment.** A judgment or order is entered within the meaning of this Rule when it is entered into the docket. A notice of appeal filed after a verdict or an order, finding, or judgment of the court, but before entry in the docket shall be treated as filed on the date of entry into the docket.

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

order, or other document acknowledging the entry of final judgment in the proceeding.

**(b) Criminal Cases.**

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

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

**(A)** arrest of judgment under M.R.U. Crim. P. 34; or

**(B)** judgment of acquittal after verdict under M.R.U. Crim. P. 29; or

**(C)** a new trial under M.R.U. Crim. P. 33; or

**(D)** correction or reduction of sentence under M.R.U. Crim. P. 35(a) or 35(c)

is filed within 21 days after entry of judgment, a notice of appeal need not be filed within 21 days after entry of judgment. Instead, a notice of appeal may be filed at any time after the entry of judgment but not later than 21 days after the entry of the order on the motion. A notice of appeal so filed shall be treated as an appeal from both the judgment and the order on the motion, even if the notice of appeal is filed before the trial court has acted on the motion. If a notice of appeal is filed within 21 days after entry of judgment, the subsequent timely filing of one of the motions listed in subparagraphs (A)-(D) does not render ineffective the notice of appeal and preserves for review any claim of error in the order on the motion. A notice of appeal so filed shall be treated as an appeal from both the judgment and the order on the motion. This paragraph does not apply to any motion that is not listed in subparagraphs (A)-(D).

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

**(c) Civil Cases.**

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

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

**(A)** for judgment as a matter of law under M.R. Civ. P. 50(b); or

**(B)** to make or amend findings of fact or conclusions of law under M.R. Civ. P. 52(a) or (b); or

**(C)** for a new trial under M.R. Civ. P. 59; or

**(D)** to alter or amend the judgment, including a motion for reconsideration of the judgment under M.R. Civ. P. 59; or

**(E)** for reopening or reconsideration before the Public Utilities Commission pursuant to its rules of practice

is filed within the time allowed by statute or rule after entry of judgment, a notice of appeal need not be filed within 21 days after entry of judgment. Instead, a notice of appeal may be filed at any time after the entry of judgment but not later than 21 days after the entry of the order on the motion. A notice of appeal so filed shall be treated as an appeal from both the judgment and the order on the motion, even if the notice of appeal is filed before the trial court or the Public Utilities Commission has acted on the motion. If a notice of appeal is filed within 21 days after entry of judgment, the subsequent timely filing of one of the motions listed in subparagraphs (A)-(E) does not render ineffective the notice of appeal and preserves for review any claim of error in the order on the motion. A notice of appeal so filed shall be treated as an appeal from both the judgment and the order on the motion. This paragraph does not apply to any motion that is not listed in subparagraphs (A)-(E).

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

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

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

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

**(a) Cross-Appeals.**

**(1) Need to File.** If the appellee seeks any change in the judgment that is on appeal, the appellee must file a cross-appeal to preserve that issue. The notice of cross-appeal shall be filed with the clerk of the trial court from which the appeal is taken, and shall be processed in the same manner as a notice of appeal filed pursuant to Rule 2A(b)(1). An appellee need not file a notice of appeal if no change in the judgment is sought. An appellee may, without filing a cross-appeal, argue that alternative grounds support the judgment that is on appeal.

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

**(3) Status of Parties.** When more than one party has appealed, the party who first appeals shall, unless otherwise agreed by the parties or ordered

by the Law Court, be treated as the appellant in applying these Rules to such cross-appeals, and all other parties shall be treated as appellees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) Trial Court Action With Leave of the Law Court.** A party may, during the pendency of an appeal, file a motion in the Law Court to permit a

specific trial court action that is not already permitted by Rule 3(c) of these Rules. The moving party shall include, in its motion to the Law Court, the reason for the request for trial court action and shall attach to the Law Court motion the proposed trial court motion.

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

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

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

##### **(2) Civil Appeals.**

**(A) Appeals.** On or before the date that the appellant's brief is filed or is due to be filed, whichever is earlier, an appellant may dismiss the appellant's 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.

**(B) Cross-Appeals.** On or before the date that a cross-appellant's brief is filed or is due to be filed, whichever is earlier, a cross-appellant may dismiss the cross-appellant's appeal by filing with the Clerk of the Law Court a written dismissal signed by the cross-appellant or the cross-appellant's attorney. After the date on which the cross-appellant's brief is filed or is due to be filed, a cross-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 42 days (6 weeks) after the date for filing the appellee's brief in an appeal not scheduled for oral argument, 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 or cross-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 5. RECORD ON APPEAL**

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

**(b) Transcripts.** Unless excused for good cause by a Justice of the Supreme Judicial Court, the record on appeal shall include both a print and an electronic copy of any transcript that is or becomes part of the record on appeal. The electronic copy of each transcript shall be in a native .pdf format. The appellant shall ensure that an electronic copy of any transcript that is or becomes part of the record on appeal is emailed to the Clerk of the Law Court at the email address that the Clerk of the Law Court designates.

### **(1) Criminal Cases.**

**(A) Order of Transcript.** The appellant is responsible for ordering the transcript by using one of the methods prescribed by Rule 2A(d). Except as otherwise designated, the standard transcript in a criminal appeal shall include the testimony of the witnesses at trial; any bench conferences; and, in a jury trial, the closing arguments and the court's charge to the jury. The standard transcript shall also include any hearing on a motion to suppress or a motion in limine, if a ruling on such a motion is at issue on appeal, and the sentencing hearing, if sentencing is at issue on appeal.

Appellant's counsel may add portions to 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 7 days after receipt of appellant's transcript order, appellee's counsel may order additional portions of the transcript by utilizing the requisite Judicial Branch form.

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

**(B) Payment for Transcript.** A non-indigent appellant shall make satisfactory financial arrangements with the court reporter or Office of Transcript Operations within 14 days after filing the notice of appeal, or the transcript order shall be cancelled, in which case the appeal shall proceed without a transcript.

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

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

**(A) Order of Transcript.** An appellant shall order the transcript or portions of the transcript deemed necessary for appeal by using one of the methods prescribed by Rule 2A(d).

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 appellant's transcript order form, file with the Clerk of the Law Court and serve on the appellant a designation of additional parts of the transcript to be included. Unless within 7 days after service of such designation the appellant has ordered

such parts, and has so notified the appellee, the appellee may within the following 7 days either order the parts or move in the Law Court for an order requiring the appellant to do so.

**(B) Payment for Transcript.**

**(i)** Within 14 days after filing the notice of appeal and transcript order form, a party must make satisfactory arrangements with the reporter or other person from whom the transcript is ordered for payment of the cost of the transcript. In every instance in which a reporter or the Office of Transcript Operations requests a deposit prior to beginning production of a transcript, that deposit shall be paid within 7 days after the date on which the attorney, litigant, or other interested person was notified of the amount of the deposit. In the event that the deposit has not been paid within the required time, the reporter or the Office of Transcript Operations 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.

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

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

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

**(d) Unavailable Transcript.**

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

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

**(3)** After the filing of any statement of the evidence or proceedings and any objections, 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 6. FILING THE RECORD WITH THE LAW COURT**

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

**(1) Twenty-Eight-Day Retention Period.** After receipt of a notice of appeal and, when required, the requisite fee or waiver of payment of fees, the trial court clerk shall transmit the trial court record to the Clerk of the Law Court no earlier than 28 days and no later than 35 days after the filing of the notice of appeal. The 28-day period does not apply to extradition appeals. The trial court clerk shall file the trial court record in an extradition appeal with the Clerk of the Law Court within 7 days following the filing of the notice of appeal.

**(2) Effect of Certain Post-Judgment Motions.** If, during the 28 days following the filing of the notice of appeal, a timely post-judgment motion listed in Rule 2B(b)(2) or 2B(c)(2) is filed, the trial court clerk shall not transmit the trial court record to the Clerk of the Law Court until the trial court has acted on the motion. The trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the entry of the order on that post-judgment motion.

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

**(4) Record for Preliminary Hearing in the Law Court.** If prior to the time the record is transmitted, a party desires to file and have considered a motion in the Law Court for dismissal, for a stay pending appeal, or for any

intermediate order, the clerk of the trial court, at the request of any party, shall transmit to the Law Court such parts of the original record as any party shall designate.

**(b) Contents of the Record.**

The trial court clerk's record shall include a copy of the complete docket entries and originals of the following, or, if the Maine Rules of Electronic Court Systems apply, the following as they appear in the electronic case file: any opinion, order, or judgment by the trial court; the pleadings; motions and actions thereon; documentary exhibits; a list of retained exhibits; correspondence between the parties and the trial court; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; and the notice of appeal with the date of filing.

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

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

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

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

**(c) (1) Filing of Reporter's Transcript.** Unless the Law Court otherwise directs, within 56 days after the filing of the notice of appeal, 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, furnish copies to the parties, and

email an electronic copy of the transcript in native .pdf format to the Clerk of the Law Court at the email address that the Clerk of the Law Court designates.

**(2) Delayed Filing of Transcript.** If the reporter anticipates that the 56-day time limit will not be met, the reporter shall file an application with the Clerk of the Law Court requesting additional time at least five days before the expiration of the 56-day time limit. The Clerk of the Law Court is authorized to grant reasonable enlargements of time. Notwithstanding this or any other provision of these Rules, the party ordering the transcript shall exercise due diligence to assure its timely filing.

**(d) Electronic Records.**

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

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

**RULE 7. SCHEDULE FOR BRIEFING AND CONSIDERATION**

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

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

**(1) Track A Appeals.** In a Track A appeal, the appellant shall file the appellant's brief within 28 days (4 weeks) after the date that the record on appeal is complete. The appellee shall file the appellee's brief within 56 days (8 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within 14 days (2 weeks) after the date that the appellee's brief is filed.

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

- (A)** determines jeopardy pursuant to 22 M.R.S. § 4035;
- (B)** terminates parental rights pursuant to 22 M.R.S. § 4055 or 18-C M.R.S. § 9-204;
- (C)** grants a decree of adoption pursuant to 18-C M.R.S. § 9-308;
- (D)** grants, modifies, or denies the termination of, a guardianship of a minor pursuant to 18-C M.R.S. §§ 5-201 to 5-212;
- (E)** grants, modifies, or denies the termination of, a guardianship of an adult pursuant to 18-C M.R.S. §§ 5-301 to 5-319;
- (F)** establishes or changes contact between a parent and child pursuant to 19-A M.R.S. § 1653(2) or (10);
- (G)** establishes, disestablishes, or denies the establishment of, the parentage of a child pursuant to the Maine Parentage Act, 19-A M.R.S. §§ 1831-1939;
- (H)** grants rights of visitation or access to a minor child pursuant to the Grandparents and Great-grandparents Visitation Act, 19-A M.R.S. §§ 1801-1806;
- (I)** orders the involuntary commitment of a person to any institution, hospital, facility, or program listed in 34-B M.R.S. § 3801;
- (J)** orders the involuntary medication or medical treatment of a



person pursuant to 15 M.R.S. §§ 106, 107; 22 M.R.S. § 4071; 34-A M.R.S. § 3049; or 34-B M.R.S. §§ 3864, 3873-A;

**(K)** determines that a criminal defendant is not criminally responsible by reason of insanity in accordance with 17-A M.R.S. § 39;

**(L)** resolves an appeal from the denial of a request made pursuant to the Freedom of Access Act, 1 M.R.S. §§ 400-414;

**(M)** results in a juvenile adjudication or disposition pursuant to 15 M.R.S. §§ 3310 or 3314; or

**(N)** either binds or does not bind a juvenile over for prosecution as an adult pursuant to 15 M.R.S. § 3101(4).

**(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 21 days (3 weeks) after the date that the appellee's brief is filed.

**(3) Extensions of Time.** No extensions of time for filing a brief shall be granted except (A) pursuant to Rule 12A(b)(1)(A), (B) when preparation of the brief requires review of transcripts from more than five days of trial testimony and/or more than 2,000 pages of documentary exhibits first presented to the court from which the appeal is taken, or (C) upon a showing of a significant and unanticipated emergency that prevents a timely filing of a brief.

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

motion for expedited consideration of the appeal.

**(c)** [Reserved]

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

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

#### **RULE 7A. BRIEFS: FORM AND CONTENT**

**(a) Brief of the Appellant. (1)** The brief of the appellant shall contain, unless otherwise indicated, the following sections under appropriate headings and in the order here indicated:

**(A)** A table of contents, with page references.

**(B)** A table of authorities—listing each case, statute, or other authority cited in the brief—with page references.

**(C)** A short introduction stating the nature of the case. This section is optional.

**(D)** A statement of the facts of the case—including the procedural history—with citations to the pages in the appendix, transcript, or record that support each fact.

**(E)** A statement of the issues presented for review.

**(F)** A summary of the argument. This section is optional.

**(G)** 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 upon which the appellant relies. The argument for each issue presented shall begin with a statement of the standard(s) of appellate review applicable to that issue.

**(H)** A short conclusion stating the precise relief sought.

**(2)** A brief shall not include:

**(A)** any documents or images that are not a part of the trial court file or the record on appeal;

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

**(C)** except for a brief prepared by the State in a child protective case, any documents or information made confidential by statute or court order, or made “nonpublic” by the Maine Rules of Electronic Court Systems. Documents or information precluded by this section may be included in a brief only with leave of the Court.

**(b) Brief of the Appellee.** The brief of the appellee shall conform to the requirements of subdivision (a) of this Rule, except that a statement of the issues and standards of appellate review or of the facts or procedural history of the case need not be included unless the appellee is dissatisfied with the statements of the appellant.

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

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

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

**(1) General.**

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

**(B)** An amicus curiae brief shall be filed by the date on which the appellee's brief is due to be filed, unless the Law Court, for good cause shown, grants leave for later filing. Any party may file a reply brief addressing new matter raised by an amicus curiae within 14 days after service of the brief of an amicus curiae or within such other time as the Law Court may specify in granting leave for later filing to the amicus curiae.

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

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

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

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

**(f) (1) Length of Briefs.** The principal brief of any party and any amicus brief shall not exceed the greater of 40 pages or 10,000 words, and any reply brief allowed by these Rules shall not exceed 15 pages or 4,500 words,

without prior approval of the Law Court, which shall be granted only upon a showing of good cause. An appellee's brief that also addresses that appellee's cross-appeal shall not exceed the greater of 50 pages or 13,000 words. An appellant's reply brief that also responds to an appellee's cross-appeal shall not exceed the greater of 30 pages or 9,000 words.

**(2) Attachment.** The principal brief of an appellant or an appellee may include, as an attachment not exceeding 3 pages, copies of documents, photographs, or diagrams that are part of the trial court record and are not prohibited from inclusion in the brief by Rule 7A(a)(2). Any document, photograph, or diagram included as an attachment may be marked to add emphasis.

**(3) Page or Word Limit Calculations.** The table of contents, the table of authorities, the certificate of service, and any appendix bound with the appellant's brief are not counted in calculating the page or word limits set in this Rule.

**(g) Form of Briefs.**

**(1) Signature.** At least one paper copy of each party's brief filed with the Law Court shall be signed, in a manner authorized by Rule 1C, by an attorney who prepared the brief, or, if the party or parties, or amicus or amici, filing the brief are unrepresented by counsel, by each party or amicus filing the brief.

**(2) Form and Formatting.** Briefs may be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper, with printing on only one side of each page. All printed matter must appear in at least 14-point font on opaque, unglazed paper, except that footnotes may appear in 11-point font. Pages shall be 8-1/2 x 11 inches with margins of 1 inch on the top, bottom, and each side of the page, and with double spacing between each line of text except for footnotes and block quotations. Briefs must be prepared using a word processor's double space function.

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

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

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

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

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

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

**(2) Electronic Copies.** One electronic copy of each brief filed shall be emailed (1) to the Clerk of the Law Court at the email address provided by the Clerk in the written notice issued pursuant to Rule 7(a), and (2) to each other party that has provided a proper email address with his or her appearance on the appeal. The electronic copy shall be in the form of a single native .pdf file and may appear as unsigned. The electronic copy is due on the same date as

the printed copies; however, only the filing of printed copies shall be considered in determining compliance with the filing deadlines set in Rule 7(b). The filing of an electronic copy is in addition to, and does not replace, the required filing of printed copies pursuant to Rule 7A(i)(1). The Clerk of the Law Court may, for good cause shown, relieve a party of one or more of the requirements of this paragraph.

**(j) Supplemental Legal Authorities After Briefing.** If important, relevant legal authorities come to a party's attention after the party's brief has been filed and before a decision resolving the appeal has been issued, the party may promptly advise the Clerk of the Law Court of such by a letter that sets forth citations to the supplemental authorities. The letter must state the reasons for providing the supplemental authorities and must refer to the pages of the brief or to any points argued orally that the supplemental authorities address. The body of the letter must not exceed 350 words. The party may file the letter using any method permitted by Rule 10(d) of these Rules and must serve a copy of the letter on all other parties by any method permitted by Rule 5 of the Maine Rules of Civil Procedure. Any response must be made promptly and must be similarly limited. The Law Court need not wait for a response.

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

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

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

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

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

**(c) Contents, Generally.** The purpose of the appendix is to make available to each Justice of the Court those documents from the record that are essential to the review of the issues on appeal. Duplication must be avoided. No document shall appear in the appendix more than once.

**(d) 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 from the proceeding(s) below.

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

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

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

**(C)** If any part of the decision was stated orally on the record, a copy of the transcript of the decision shall be included. When a decision or ruling stated orally on the record was preceded by a colloquy with the court, the colloquy shall be included in the appendix if the colloquy does not exceed 20 pages in the appendix.

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

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



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

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

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

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

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

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

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

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

**(6) Domestic Relations, Parentage, or Child Protection Matters.** If the appeal is from a decision related to a domestic relations, parentage, or child protection matter: the child support affidavits, if child support is at issue on appeal; the financial statements of the parties, if property distribution or child or spousal support is at issue on appeal; the report of the guardian ad litem, if any, if a parental rights or parentage decision is at issue on appeal.

**(7) Criminal Appeals.** If the appeal is from a decision in a criminal matter: the presentence report, if any, if a sentence is at issue on appeal; the search warrant or arrest warrant and any affidavit in support of issuance of the warrant, if a search warrant or arrest warrant or actions pursuant to a search warrant or arrest warrant are at issue on appeal; and the Attorney General's authorization, if required, for any State appeal brought pursuant to Rule 21.

**(f) Contents, Discretionary.** The following materials from the trial court record may be included in an appendix but are not required:

**(1) Exhibits.** If particular exhibits are essential to the Court's understanding of the issues on appeal, the appendix may include copies of those exhibits. Copies of exhibits, including photographs, maps, charts, or diagrams that were presented in color to the trial court or administrative agency shall be reproduced in color by any means, such as scanning or color printing, that reproduces the exhibit in the appendix to appear as close as possible to the way the exhibit appeared in the trial court record.

**(2) Other Pleadings.** Copies of other pleadings or filings that appear in the trial court record may be included, but only if they are essential to the Court's understanding of the issues on appeal.

**(3) Placement.** Documents from the trial court record, other than those that are designated "mandatory," that are essential for understanding the specific issues on appeal shall be placed in the appendix following the documents required by Rule 8(d) or (e).

**(g) Exclusions from the Appendix.** The appendix shall not include:

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

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

**(3)** except for an appendix prepared by the State in a child protective case, any documents made confidential by statute or court order that are not required to be included in the appendix by subdivisions (d) or (e) hereof; or

**(4)** any portion of the transcript from the trial court other than on the record statements or discussions required to be included in the appendix by subdivisions (d) or (e) hereof.

**(h) Failure to Comply with Rules.** An appendix that (1) fails to include mandatory documents; (2) does not present documents in the required order: first documents required by subdivision (d), then documents required by subdivision (e), then documents, if any, included pursuant to subdivision (f); (3) includes duplicate copies of documents; (4) includes documents or images excluded by subdivision (g); or (5) otherwise is not prepared in compliance with these Rules may be rejected, with the party that prepared the appendix being required to prepare and file a replacement appendix that complies with these Rules or being subject to another appropriate sanction, including dismissal of the appeal.

**(i) Contents, Agreement of the Parties.** The parties shall confer and attempt to reach agreement on the contents of the appendix in compliance with this Rule. If the parties do not agree:

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

**(2)** If the appellee wishes to have additional documents included in the appendix, the appellee must, within 7 days after notice of the appellant's list of documents, designate additional documents for inclusion in the appendix, and

the appellant shall include those documents in the appendix, unless otherwise ordered by the court.

**(j) 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 and the appellant concludes that such documents are not essential to understanding of the issues on appeal, the appellant shall include such documents in the appendix, but may seek recovery of the costs for inclusion of such documents after decision on the appeal. Following an appeal in a civil case, any of the costs incurred in the production of the appendix may be taxed to either party by the Law Court pursuant to Rule 13.

**(k) Content, Format.**

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

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

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

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

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

**(l) 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.

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

**(n) Supplement of Legal Authorities.** A supplement of legal authorities is not required. The parties may, at their discretion, provide the Court with a brief supplement, separate from the appendix, containing important, relevant legal authorities such as statutes or court decisions from other jurisdictions. It is not necessary to provide copies of any or all cited authorities. The supplement of legal authorities is not counted in computing the appendix page limit.

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

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

**(a) Motions.**

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

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

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

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

**(b) Certificate of Service Required.** Every motion shall be served on the other parties to the appeal by any method permitted by Rule 5 of the Maine Rules of Civil Procedure 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.**

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

**(2)** In lieu of filing paper copies, a party may file electronically motions, responses, and other papers not required to be produced in a manner prescribed by Rule 7A(g). Electronic filing of a document shall be made by transmitting a single .pdf file of the document to the Clerk of the Law Court in the manner prescribed by the Clerk in the written notice issued pursuant to Rule 3(a)(2). The .pdf document shall conform to the formatting requirements of subdivision (d)(1) of this Rule.

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

### **(a) Scheduling of Oral Argument.**

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

**(2) Continuance.** An application for continuance of oral argument must be made by motion filed reasonably in advance of the date fixed for hearing. When a request to continue an oral argument is granted, the Law Court shall have the option of considering the appeal on briefs without oral argument to avoid undue delay in consideration and resolution of the appeal.

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

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

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

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

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

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

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

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

**(g) Submission on Briefs.**

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

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



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

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

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

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

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

**(c) Decisions of the Law Court.** Decisions of the Law Court may be reported by several methods, including a signed opinion, a per curiam opinion, or a memorandum of decision. A memorandum of decision decides an appeal but does not establish precedent and will not be published as an opinion of the Court in the Maine Reporter.

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

**(a)(1) Clerk's Office and Filing.** All papers or electronic or digital content 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 without explicit authorization shall be date-stamped and deemed to be filed on the next regular business day.

**(3)** [Reserved]

**(4) Electronic Filings and Fax Filings.** Except as otherwise permitted or required by these Rules, filings by electronic transmission of data or by means of a fax machine CD, DVD, flash drive, email, 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 filed pursuant to M.R. App. P. 10 to:

**(A)** Enlarge the time for the filing of a brief or appendix for up to 7 days.

**(B)** With the agreement of the parties, consolidate appeals involving the same parties.

**(2)** Dismiss an appeal, pursuant to M.R. App. P. 7(d), when the appellant has failed to file the required brief within 7 days after expiration of the time specified by M.R. App. P. 7(b).

**(3)** Dismiss sentence review proceedings filed pursuant to M.R. App. P. 20, when the sentence sought to be appealed was less than one year of incarceration, as addressed in 15 M.R.S. § 2151.

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

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

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

**(a) Record on Appeal.** The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any person to the same extent as that record was available for inspection and copying in the trial court.

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

**(c) Briefs.** The briefs filed with the Law Court, other than briefs in appeals from matters listed in subsection (d)(1)-(5) below, 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: (1) an appeal from a child protection proceeding; (2) proceedings involving an adoption or guardianship or a petition for adoption or guardianship; (3) juvenile proceedings in which the record is sealed in the trial court; (4) any proceeding in which the care, custody, and support of a minor child is an issue; and (5) any proceeding in which a document or information that is confidential, deemed nonpublic, or was filed under seal in the trial court by statute, court rule, administrative order, or trial court order, is contained in the appendix.

Any brief or appendix filed in a matter listed in this subsection (1)-(5) shall automatically be labeled and filed as "under seal" or "confidential" unless the

Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4) orders otherwise.

**(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 13. COSTS AND INTEREST ON JUDGMENTS IN CIVIL CASES**

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

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

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

**(2) The Appendix.** The actual cost of printing or otherwise reproducing the appendix, but not more than \$5.00 per page, for not more than a total of 300 pages (150 sheets of paper, printed on both sides).

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

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

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

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

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

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

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

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

**(a) Issuance of Mandate.** The mandate of the Law Court, with an opinion or order resolving any appeal, shall be issued by the Clerk of the Law Court by transmitting an attested copy thereof to the trial court. Copies of the mandate shall be emailed to those parties to the appeal who have provided a proper email address. No paper copy of the mandate will be provided to the parties to the appeal who are represented by counsel. The opinion or decision of the Law Court sent to the parties on the day the opinion or decision is published, with the mandate appearing at the end, shall constitute notice of the mandate, and no further notice shall be provided.

**(1) Criminal Appeals.** The mandate of the Law Court in a criminal appeal shall issue the day that the decision resolving the appeal is published or the first business day thereafter.

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

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

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

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

**(b) Motions for Reconsideration.**

**(1) (A)** A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall be filed with the Clerk of the Law Court within 14 days after the date of that decision. The motion shall state with particularity the points of law or fact that the moving party asserts the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the moving party desires to

present. An original and 7 copies of the motion and any supporting papers shall be filed and shall conform to Rule 10(d).

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

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

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

**(c) Suspension of Rules.** In the interest of expediting decision upon any matter, or for other good cause shown, the Law Court may modify or suspend any of the requirements or provisions of these Rules, except those addressing filing requirements and time limits in Rules 2A, 2B, 2C, and 14(b), on application of a party or on its own motion, and may order proceedings in accordance with its direction.

### **RULES 15 - 18. [RESERVED]**

[Former Rules 15 and 16 moved to become Rules 1A and 1B.]

## **II. SPECIAL APPEAL PROCEEDINGS**

### **RULE 19. DISCRETIONARY CRIMINAL APPEALS**

**(a) (1) 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.

**(2) Specifically Included Appeals.** The appeals covered by this Rule include:

**(A)** 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;

**(B)** An appeal by a person whose probation is revoked, or whose conditions of probation are modified pursuant to 17-A M.R.S. § 1202(2), or whose request for modification is denied pursuant to 17-A M.R.S. § 1202(2);

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

**(D)** 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;

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

**(F)** 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;

**(G)** 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;

**(H)** 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;

**(I)** 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

**(J)** An appeal from a final judgment entered under 15 M.R.S. § 2264(5) or (7), pursuant to 15 M.R.S. § 2267(1), when the appeal is taken by a person



who filed a motion seeking a court order sealing the person's 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 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 Rule 7A(g) 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 a party who did not file the appeal.

Until the Law Court rules on the request for a certificate of probable cause, no further briefing pursuant to Rule 7 or 7A shall be submitted and no appendix pursuant to Rule 8 shall be prepared.

**(d) (1) Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal.** Unless the Law Court otherwise directs, within 56 days after the date of the filing 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, if a hearing on the matter was held and recorded. The transcript shall be filed in accordance with Rule 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:

**(A)** 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.

**(B)** For an appeal from a ruling on a motion for revocation or modification of probation, the hearing on the motion for revocation or modification of probation.

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

**(D)** 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.

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

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

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

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

**(I) (i)** 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.

**(ii)** 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.

**(J)** 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) Generally No Duty to Prepare and File Transcript of Extradition Hearings.**

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

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

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

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

**(f) Granting of a Certificate of Probable Cause.** If the Law Court issues a certificate of probable cause authorizing consideration of the appeal on the merits, the Clerk of the Law Court shall forthwith notify the parties and the trial court from which the appeal was taken. For purposes of timing and the applicability of the Maine Rules of Appellate Procedure, the docketing in the Law Court of an order granting a certificate of probable cause shall be treated in the same manner as the filing of a notice of appeal pursuant to Rule 2A(b)(1). If an appeal is pending pursuant to Rule 2A involving the same criminal judgment, the Rule 19 appeal shall be treated as part of the Rule 2A appeal.

**(g) Additional Transcript Orders.**

**(A)** 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 Rule 5(b)(1)(A).

**(B)** Costs of the transcript shall be paid in accordance with Rule 5(b)(1)(B).

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

**(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 Rule 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 Rule 7. The appeal shall then proceed as other appeals under the Maine Rules of Appellate Procedure.

**RULE 20. APPEAL OF SENTENCE**

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

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

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

**(b) Time for Filing an Application for Leave to Appeal.** The time within which to file an application to allow an appeal of sentence shall be as provided in Rule 2B(b)(1).

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

The court in which sentence was imposed shall take no further action pending disposition by the Law Court of the application for review of sentence and, if the application is granted, shall take no further action pending ruling on the sentence appeal except as provided in Rule 3(b), but with the further limitation, as reflected in 15 M.R.S. § 2157, that the court may not stay execution of sentence or set bail.

**(d) Duty of Reporter to Prepare and File Sentencing Transcript.** Unless the Law Court otherwise directs, within 42 days after the date of filing of the application to allow appeal of sentence, with notice provided by the date-stamped copy of the application from the clerk of the court in which sentence

was imposed, the court reporter shall file the transcript of the sentencing hearing with the Clerk of the Law Court.

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

**(e) Correction or Modification of Record.** The court in which sentence was imposed, the Sentence Review Panel of the Supreme Judicial Court, and the Law Court may correct or supplement the record as provided in Rule 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 Rule 2A(b)(1). A sentence appeal in the Law Court after an application for leave to appeal is granted shall proceed in accordance with the general appeal provisions of Maine Rules of Appellate Procedure, except that any party desiring transcripts of the proceeding not already in the file shall file a transcript order form within 7 days after notice that leave to appeal has been granted. If an appeal is pending pursuant to Rule 2A involving the same criminal judgment, the sentence appeal shall be considered as part of that appeal.

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

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

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

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

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

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

**(e) Tolling of Appeal Period.** If the State files a motion for findings of fact and conclusions of law pursuant to M.R.U. Crim. P. 41A(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 (1) written findings and conclusions are entered or (2) a notation reflecting that no findings and conclusions have been made is entered on the criminal docket.

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

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

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

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

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

**(a) When and How Taken.**

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

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

**(3)** Within the original 20 days after receipt of notice of the decision or within 14 days after the date of the first filing of a notice of appeal with the Clerk of the Law Court, any other party in interest may file a notice of appeal



indicating any additional point that the other party may wish to address in an appeal.

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

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

**(1) Form of Petition.**

**(A)** Within 20 days of the filing of the decision or the last filed, timely notice of appeal, the petitioner shall file with the Clerk of the Law Court 10 copies of a petition for appellate review, which shall state 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 Rule 23(b)(2).

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

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

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

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

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

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

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

**(5) Response.** Within 14 days any other party in interest may file with the Clerk of the Law Court 10 copies of a response to the petition for appellate review. The response may not exceed 12 pages.

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

**(c) Granting or Denying the Petition for Appellate Review.** The petition for appellate review shall be granted or denied as provided in 39-A M.R.S. § 322(3). If the petition is granted, the order granting the petition shall be treated as the notice of appeal, the first petitioner shall be treated as the appellant, and the appeal shall proceed in accordance with these Rules as applicable to an appeal in a civil action; except that:

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

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

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

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

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

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

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

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

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

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

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

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

## **RULE 24. REPORT OF CASES**

### **(a) Report by Agreement of Important or Doubtful Questions.**

When the trial court is of the opinion that a question of law presented to it is of sufficient importance or doubt to justify a report to the Law Court for determination, it may so report when:

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

### **(b)** [Reserved]

**(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 pursuant to this Rule shall be entered in the Law Court and proceed as any other appeal, with the plaintiff or the party aggrieved by a reported interlocutory ruling being treated as the appellant. In a civil case, the appellant shall pay the fee for filing of a notice of appeal promptly following entry of the order of report.

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

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

certify such questions of law of this State to the Supreme Judicial Court sitting as the Law Court, for instructions concerning such questions of state law.

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

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

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

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

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