STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF APPELLATE PROCEDURE

2008 Me. Rules 11

Effective: August 1, 2008

All of the Justices concurring therein, the following amendments to the Maine Rules of Appellate Procedure, are hereby adopted to be effective August 1, 2008.

The specific rules amendments are set forth below. To aid in understanding each amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 12(a) of the Maine Rules of Appellate Procedure is amended to read as follows:

(a) Constitution of the Law Court; Concurrence Required. When sitting as the Law Court to determine questions of law arising in any civil or criminal action or proceeding, the Supreme Judicial Court shall be composed of those justices then available to sit and qualified to act. The Court shall hear and determine such questions by the concurrence of a majority of the justices sitting and qualified to act. A qualified justice may participate in a decision even though not present at oral argument. When a case is in order for consideration and fewer than three of the justices are then available and qualified to act, the matter shall stand continued to such time as the court shall determine. ~~A judgment imposing a sentence of imprisonment for life shall be reversed if three justices concur supporting a reversal.~~

Advisory Note

The direction that a judgment imposing a life sentence be reversed if three justices concur supporting a reversal was based on a sentence stating a similar

requirement that appeared in 15 M.R.S. § 2115 (2007). In 2008, the Legislature amended § 2115 to remove that sentence and eliminate the possibility that a judgment imposing a life sentence could be vacated by a minority vote of the Court. PL 2008, ch 475.

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

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

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

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

2. Rule 14(b)(1) of the Maine Rules of Appellate Procedure is amended to read as follows:

(1) A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall ~~must~~ be filed with the Clerk of the Law Court within 14 days after the date of that decision. An original and seven copies of the motion and any supporting papers shall be filed and shall conform to Rule 9(f). The motion shall state with particularity the points of law or fact that ~~in the opinion of~~ the moving party asserts the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the moving party desires to present. No response to a motion for reconsideration shall be filed unless requested by the Law Court. The motion is not subject to oral argument except by specific order of the Court.

Advisory Notes

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

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

3. These amendments are effective August 1, 2008.

Dated: July 7, 2008

/s/
LEIGH I. SAUFLEY
Chief Justice

/s/
ROBERT W. CLIFFORD
Associate Justice

/s/
DONALD G. ALEXANDER
Associate Justice

/s/
JON D. LEVY
Associate Justice

/s/
WARREN M. SILVER
Associate Justice

/s/
ANDREW M. MEAD
Associate Justice

/s/
ELLEN A. GORMAN
Associate Justice