

STATE OF MAINE  
SUPREME JUDICIAL COURT  
AMENDMENTS TO  
THE MAINE RULES OF APPELLATE PROCEDURE

**2012 Me. Rules 10**

Effective: September 1, 2012

All of the Justices concurring therein, the following amendments to the Maine Rules of Appellate Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each 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 2(a)(1) and (4) and Rule 2(b)(3) of the Maine Rules of Appellate Procedure are amended to read as follows:

**(a) Notice of Appeal.**

**(1)** Review of a judgment, order or ruling of the District Court or the Superior Court, or the Probate Courts, or a single justice of the Supreme Judicial Court that is by law reviewable by the Law Court shall be by appeal. The appeal shall be commenced by filing a notice of appeal with the clerk of the court from which the appeal is taken, along with any required filing fee or a request to have the fee waived pursuant to M.R. Civ. P. 91. The appellant shall file with the notice of appeal an order for those portions of the transcript the appellant intends to include in the record on appeal. The notice of appeal and transcript order shall be signed by the appellant or the appellant's attorney. If a notice is not signed, or if no fee is paid or waived for appeals in which a fee is required, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the clerk shall return all documents to the party who filed them.

. . . .

(4) ~~Except as provided in M.R. Crim. P. 76, a~~ A notice of appeal filed by the State in a criminal case shall be accompanied by a written approval of the appeal signed by the Attorney General pursuant to Rule 21(b). The clerk of the trial court shall file the approval, note the filing in the criminal docket and mail a date-stamped copy of the approval to the defendant or the attorney for the defendant.

....

**(b) Time for Appeal**

....

(3) **Civil Cases.** The time within which an appeal may be taken in a civil case shall be 21 days after entry of the judgment or order appealed from unless a shorter time is provided by law. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal (accompanied, when required, by the filing fee or a request to have the fee waived pursuant to M.R. Civ. P. 91) within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated by a motion made pursuant to any of the following rules and filed within the time required for filing the motion, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of an order making findings of fact or conclusions of law as requested under M.R. Civ. P. 52(a), or denying a motion for a new trial under M.R. Civ. P. 59, or granting or denying: (i) a motion for judgment under M.R. Civ. P. 50(b); (ii) a motion under M.R. Civ. P. 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) a motion under M.R. Civ. P. 59 to alter or amend the judgment including a motion for reconsideration of the judgment; (iv) a timely motion for reopening or reconsideration brought before the Public Utilities Commission pursuant to its rules of practice.

**Advisory Note – July 2012**

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

2. Rule 3(a) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(a) Law Court Docket.** Upon receipt of the notice of appeal and, when required, the requisite fee or waiver, the trial court clerk shall mark the case “Law” on the docket. The trial court clerk shall then transmit a copy of the notice of appeal together with a copy of all docket entries to the Clerk of the Law Court. Upon receipt of the copies of the notice of appeal and the docket entries, the Clerk of the Law Court shall forthwith docket the appeal and send each party of record a written notice of the docketing, the Law Court docket number, and the date within which the record on appeal and the reporter’s transcript must be filed.

#### **Advisory Note – July 2012**

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

3. Rule 4 of the Maine Rules of Appellate Procedure is amended to read as follows:

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

**(a) Voluntary Dismissal. (1) Criminal Appeals.** Prior to the time stated in subdivision (b) of this Rule, a ~~—A~~ criminal defendant may dismiss his or her appeal by filing with the Clerk of the Law Court a written dismissal signed by the defendant, and the State may dismiss its appeal by filing a written dismissal signed by the attorney for the State; ~~provided that on or after the date scheduled for argument or submission on briefs, it may be dismissed only with leave of the Law Court.~~

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

~~(b) (3) **By Stipulation.** Prior to the time stated in subdivision (b) of this Rule, An a civil appeal may be dismissed by stipulation entered into by all of the parties and filed with the Clerk of the Law Court, provided that on or after the date scheduled for argument or submission on briefs, it may be dismissed only with leave of the Law Court.~~

**(b) On or After Date for Consideration.** On or after the date scheduled for oral argument or submission on briefs, an appeal may be dismissed voluntarily or by stipulation only with leave of the Law Court.

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

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

#### **Advisory Note – July 2012**

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

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

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

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

4. Rule 5(a) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(a) Contents of Record.** The record on appeal shall consist of the trial court clerk's record and exhibits filed in the trial court, the reporter's transcript of the proceedings, if any, and a copy of the docket entries. As used in ~~this rule~~ these rules, the term "reporter" means a court reporter, the Office of Transcript Production, or a transcriber of an electronically recorded record.

#### **Advisory Note – July 2012**

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

5. Rule 5(c) of the Maine Rules of Appellate Procedure is amended to read as follows:

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

#### **Advisory Note – July 2012**

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

6. Rule 6(a) of the Maine Rules of Appellate Procedure is amended to read as follows:

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

#### **Advisory Note – July 2012**

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

7. The first paragraph of Rule 6(c) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(c) Filing of Reporter's Transcript.** Unless the Law Court otherwise directs, within 56 days of receipt of the notice of appeal from the clerk of the trial court, the reporter shall file the reporter's transcript reproduced in accordance with M.R. Civ. P. 5(i)(2) with the Clerk of the Law Court and furnish copies to the parties. With the reporter's transcript filed with the Clerk of the Law Court, the reporter shall include an electronic copy of the transcript.

#### **Advisory Note – July 2012**

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

8. Rule 7(b) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(b) Time for Filing Briefs.** The appellant shall file the appellant's brief within 56 days (8 weeks) after the date ~~of written notice, pursuant to Rule 7(a)~~, that the record on appeal is complete. The appellee shall file the appellee's brief within 105 days (15 weeks) after the date ~~on which~~ that the record on appeal is complete is filed in the Law Court, and the appellant may file a reply brief within 14 days (2 weeks) after the date that the appellee's brief is due to be filed. The specific due date for each brief shall be listed on the written notice sent by the Clerk of the Law Court pursuant to Rule 7(a). With the extended time for filing

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

### Advisory Note – July 2012

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

9. Rule 7(c) of the Maine Rules of Appellate Procedure is amended to read as follows:

#### **(c) Printed and Electronic Copies.**

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

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

### Advisory Note – July 2012

Rule 7(c)(1) is amended to clarify that printed copies of briefs are what is required. Rule 7(c)(2) is adopted to encourage parties to file an electronic copy of each brief in addition to the required printed copies. The electronic copy is due

on the same date as the printed copies, but only receipt of printed copies is considered in determining compliance with the filing deadlines. The rule permits the Clerk of the Law Court, for good cause, to relieve a party of any of the requirements of paragraph 2, including the requirement that the copy be in .pdf format. Good cause might include a party's technical inability to produce a .pdf copy of the brief.

10. Rule 8(f) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(f) Content, Format.** The appendix shall be bound in white stock, and each page shall be numbered consecutively. If the appendix consists of 20 pages or less, it may be bound with the appellant's brief. Otherwise, it shall be separately bound with a white cover page designated Appendix and carrying the Law Court docket number, case title, and appearances of counsel or unrepresented parties for the appeal. The appendix shall be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper. Printing shall be on both sides of ~~each page~~the paper. Except for oversize or electronic exhibits, the ~~The pages~~paper shall be 8 1/2 x 11 inches. The appendix shall be spiral bound or bound by a similar process that permits the pages to lie flat when opened. Plastic or metal spikes, staples, or posts shall not be used in binding. Oversize exhibits such as maps, and electronic exhibits on disk or another medium, may be attached to the appendix in any method that permits the appendix to be handled as a bound volume. No volume of an appendix shall exceed 150 sheets of paper~~pages~~ printed on both sides, not including oversize and electronic exhibits, and no appendix shall exceed one volume without prior approval of the Court.

### Advisory Note – July 2012

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



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

11. Rule 12A(a)(4) of the Maine Rules of Appellate Procedure is amended to read as follows:

**(4) Electronic Filings.** Except as otherwise permitted or required by these rules, filings ~~Filings~~ by electronic transmission of data or by means of a compact disk (CD) or any other method for electronic or internet filing in place of the filing of paper documents required by these rules is not permitted. ~~Parties filing paper copies of briefs and appendices prepared pursuant to M.R. App. P. 8 and 9 and who utilized computerized electronic word processing or other electronic systems to prepare the briefs or appendices, are encouraged to file, with the required paper copies, a copy of the electronic file from which the brief or appendix was prepared and printed. Such filings should be by CD, not by electronic transmission of data. Filing of electronic copies of briefs and appendices along with the required paper copies of such documents, while encouraged, is not required.~~

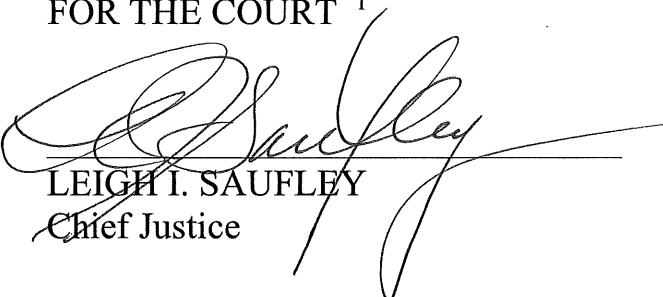
#### Advisory Note – July 2012

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

12. These amendments shall be effective and shall govern appeals filed on and after September 1, 2012.

Dated: July 12, 2012

FOR THE COURT <sup>1</sup>



LEIGH I. SAUFLEY  
Chief Justice

DONALD G. ALEXANDER  
JON D. LEVY  
WARREN M. SILVER  
ANDREW M. MEAD  
ELLEN A. GORMAN  
JOSEPH M. JABAR  
Associate Justices

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<sup>1</sup> This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.