

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

2012 Me. Rules 12

Effective: September 1, 2012

All the justices concurring therein, the following amendments to the Maine Rules of Criminal 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 5(b) and (c) of the Maine Rules of Criminal Procedure are amended to read as follows:

(b) Initial Statement of Rights by the District Court Judge-Court. At the initial court appearance of a defendant under subdivision (a) of this rule or at the first court appearance of any other defendant charged with a Class D or Class E crime (and not charged with related Class C or higher crimes), the presiding ~~When a person arrested, either under a warrant issued upon a complaint filed in the District Court or without a warrant, is brought before a District Court judge, or a person who has been summonsed appears before a District Court judge in response to a summons, the District Court judge or justice,~~ in open court, shall, unless waived by ~~the person or the person's~~ defendant's counsel, inform the defendant of:

(1) ~~inform the person of the substance of the charges against the person~~ defendant;

(2) ~~inform the person of the person's~~ defendant's right to retain counsel, ~~and to request the assignment of counsel, and that the person may to~~ be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) ~~inform the person that the person's~~ right to remain silent and that the defendant is not required to make a statement, and that any statement made by the ~~person~~ defendant may be used against the ~~person~~ defendant; ~~and~~

~~(4) — admit the person to bail as provided by law.~~

~~(e) — Further Statement by the District Court Judge Before Calling Upon the Person to Plead.~~ In addition to the statements in subsection (b) of this Rule, before calling upon the person to plead, the District Court judge shall inform the person of:

~~(14) the maximum penalties—possible sentence, and any applicable mandatory minimum penalties—sentence; and~~

~~(25) the person’s—defendant’s right to trial by jury and, in courts not operating a unified criminal docket, of the necessity of a demand for jury trial in accordance with these Rrules; and.~~

~~(3) — the duty placed on the person by 14 M.R.S. § 3141(3) of immediate payment in full of any fine imposed by the court if convicted of the charges against that person;~~

~~A person charged with a Class D or Class E crime shall be called upon to plead unless that person has requested a reasonable time and opportunity to consult with counsel. The statement of rights required to be given by this rule shall be stated live to the defendant in open court by a judge or justice, or stated by a judge or justice in a video recording viewed by the defendant prior to his or her first appearance.~~

(c) Pleas at Initial Appearance. A defendant charged with a Class D or Class E crime (and not charged with related Class C or higher crimes) shall be called upon to plead after that defendant has been provided with the statement of rights required by subdivision (b), unless that defendant has requested a reasonable time and opportunity to consult with counsel.

If a defendant charged with a Class D or Class E crime who is not represented by a lawyer for the day or other counsel pleads “not guilty” or for whom a plea of “not guilty” is entered by the court, the judge or justice shall ensure that the defendant is aware of his or her right to trial by jury and, in courts not operating a unified criminal docket, of the necessity of a timely demand for a jury trial in accordance with these rules.

Before accepting a guilty or nolo contendere plea from a defendant charged with a Class D or Class E crime, the judge or justice shall comply with the requirements of Rule 11(g).

Advisory Note – July 2012

The amendment modifies Rule 5(b) and (c) in the following respects.

First, the word “person,” or a variant thereof, is replaced with the word “defendant,” or its variant, throughout subdivision (b) because the latter term is overwhelmingly employed in the Maine Rules of Criminal Procedure when referencing an accused.

Second, the introductory language to subdivision (b) is restated using a simpler approach.

Third, the former option in subdivision (b), that a defendant may waive being informed by the court of the defendant’s constitutional rights at the initial appearance, is deleted. Waiver of such rights may be exercised only by the defendant’s counsel. A lawyer for the day, appointed for the limited purpose of representing the defendant at the initial appearance, may waive for the defendant a statement of rights otherwise required at that initial appearance if the lawyer affirmatively informs the court that the lawyer has specifically advised the defendant of the rights and that the defendant understood them. *State v. Galarneau*, 2011 ME 60, ¶¶ 8-10, 20 A.3d 99.

Fourth, formalistic changes are made to paragraph (2) of subdivision (b) to enhance clarity and readability.

Fifth, the phrase “right to remain silent” is added in paragraph (3) of subdivision (b).

Sixth, former subdivision (c) is merged with subdivision (b). The use of two subdivisions is unnecessary and creates potential confusion.

Seventh, the provision covering admitting a defendant to bail, formerly in paragraph (4) of subdivision (b), is deleted as unnecessary because the procedure for setting preconviction bail, including the directive for court action, is addressed by statute in the Maine Bail Code.

Eighth, the word “penalties” in paragraph (4) of subdivision (b) [formerly paragraph (1) of subdivision (c)] is replaced by the word “sentence” both to conform paragraph (4)’s terminology with that of Rule 11(c)(1), and to eliminate a confusing term that more commonly is used in the context of civil violations rather than crimes.

Ninth, the phrase “in courts not operating a unified criminal docket” is added to paragraph (5) of subdivision (b) [formerly paragraph (2) of subdivision (c)]. The defendant must be informed of the necessity of a demand for jury trial only in courts not operating a unified criminal docket. In unified criminal docket courts, a defendant charged with any crime has the opportunity for a jury trial, unless that right is waived.

Tenth, the reference to payment of fines in former paragraph (3) of subdivision (c) is not incorporated into subdivision (b) because the issue of payment of fines does not arise until after a plea, and then only if a fine is imposed.

Eleventh, the final unnumbered paragraph in former subdivision (c) is deleted since its substance is now addressed in new subdivision (c).

Twelfth, a new final paragraph is added to subdivision (b) recognizing current practice that allows the general statements of rights to be presented by video at a defendant’s first appearance, while clarifying the requirement of an individualized colloquy before the acceptance of any pleas that will result in conviction. The individualized colloquy is not required when a defendant is represented by retained or appointed counsel or a lawyer for the day and the court is satisfied that the attorney advised the person of the rights.

Finally, the amendment adds a new subdivision (c) to Rule 5 that, along with the amendments to Rule 5(b), clarifies the practice for statements of rights and taking of pleas at first appearance on misdemeanor charges.

2. Rule 5C(b) of the Maine Rules of Criminal Procedure is amended to read as follows:

(b) Initial Statement by the Court. ~~When a person arrested for at least one Class C or higher crime (accompanied or unaccompanied by related Class D or Class E crimes), (i) under a warrant issued upon an indictment, an information, or~~

~~upon a complaint or (ii) without a warrant, is brought before a court or when a person who has been summonsed appears before a court in response to a summons, the District Court~~ At the initial appearance of a defendant under subdivision (a) of this rule or at the first court appearance of any other defendant charged with at least one Class C or higher crime (accompanied or unaccompanied by related Class D or Class E crimes), the presiding judge or Superior Court justice, in open court, shall, unless waived by the person or the person's defendant's counsel, inform the person-defendant of:

- (1) the substance of the charges against the person-defendant;
- (2) the person's defendant's right to retain counsel, and to request the assignment of counsel, and ~~that the person may to~~ be allowed a reasonable time and opportunity to consult counsel before entering a plea; and
- (3) the right to remain silent and that the person defendant is not required to make a statement, and that any statement made by the person-defendant may be used against the person-defendant.

~~In the proceeding, the court shall also admit the person to bail as provided by law.~~

Advisory Note – July 2012

The amendment conforms the introductory language of subdivision (b) to that in Rule 5(b) and, as in Rule 5(b), the option that the charged defendant may waive being informed by the court of the constitutional rights listed therein is eliminated. Waiver of such rights may be exercised only by the defendant's counsel. See also Advisory Note – July 2012 to M.R. Crim. P. 5(b) and (c).

The amendment also replaces the word “person,” or a variant thereof, with the word “defendant,” or its variant, throughout subdivision (b). See also Advisory Note – July 2012 to M.R. Crim. P. 5(b) and (c).

Finally, the provision covering admitting a defendant to bail is deleted as unnecessary because the procedure for setting preconviction bail, including the directive for court action, is addressed by statute in the Maine Bail Code.

3. Rule 5C(d) of the Maine Rules of Criminal Procedure is amended to read as follows:

(d) Further Statement and Arraignment by the Court with Respect to Class D or E Crimes. In addition to the statements in subsection (b) of this Rule, when a ~~person~~ defendant is charged with a Class D or Class E crime and no related Class C or higher crime, before calling upon a ~~person~~ defendant to plead, the court shall provide to the ~~person~~ defendant the statement of rights required by Rule 5~~(e)~~ (b), paragraphs 4 and 5 and comply with the other requirements of Rule 5(c).

Advisory Note – July 2012

The amendment modifies subdivision (d) in three respects.

First, it changes the current reference to “Rule 5(c)” to read “Rule 5(b), paragraphs (4) and (5)” both because the rights addressed in subdivision (b) and (c) of Rule 5 have now been collapsed into a single subdivision (b) [see Advisory Note – July 2012 to M.R. Crim. P. 5(b) and (c)] and because the initial statement by the court in Rule 5C(b) already provides for the first three rights contained in Rule 5(b).

Second, it adds a directive that the court also comply with requirements of new subdivision (c) of Rule 5.

Third, it replaces the word “person,” or a variant thereof, with the word “defendant,” or its variant, throughout subdivision (d). See also Advisory Note – July 2012 to M.R. Crim. P. 5(b) and (c).

4. At each place in Rules 4A, 5 and 5C of the Maine Rules of Criminal Procedure at which the word “person,” or a variant thereof, appears, and not changed to “defendant,” or its variant, by these specific rules amendments, the word “person,” or a variant thereof, shall be changed to “defendant,” or its variant.

Advisory Note – July 2012

See Advisory Note – July 2012 to M.R. Crim. P. 5(b) and (c). See also Advisory Note – July 2012 to M.R. Crim. P. 5C(b) and (d).

5. Rule 11 of the Maine Rules of Criminal Procedure is amended to read as follows:

RULE 11. PLEAS; ACCEPTANCE OF A PLEA TO A CHARGE OF A CLASS C OR HIGHER CRIME; SPECIAL CIRCUMSTANCES AS TO ACCEPTANCE OF CERTAIN PLEAS; NOTICE TO NONCITIZENS OF AS TO POSSIBLE POTENTIAL ADVERSE IMMIGRATION CONSEQUENCES OF A PLEA

(a) Pleas for Any Crime.

(1) *In General.* A defendant may plead not guilty, not criminally responsible by reason of insanity, guilty, or nolo contendere. A defendant may plead both not guilty and not criminally responsible by reason of insanity to the same charge.

The court may refuse to accept a plea of guilty or nolo contendere.

If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or nolo contendere, the court shall enter a plea of not guilty.

(2) *Conditional Plea.* With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere. A conditional plea shall be in writing. It shall specifically state any pretrial motion and the ruling thereon to be preserved for appellate review. If the court approves and the attorney for the state consents to entry of the conditional plea of guilty or nolo contendere, the parties shall file a written certification that the record is adequate for appellate review and that the case is not appropriate for application of the harmless error doctrine. Appellate review of any specified ruling shall not be barred by the entry of the conditional plea.

If the defendant prevails on appeal, the defendant shall be allowed to withdraw the plea.

~~(3) *Fine on Acceptance of Guilty Plea in District Court.* The District Court clerk may, at the signed request of the defendant, accept a guilty plea upon payment of a fine as set by the judge in the particular case or as set by the judge in accordance with a schedule of fines established by the judge with the approval of the Chief Judge for various categories of such crimes.~~

(b) Prerequisites to Accepting a Plea of Guilty or Nolo Contendere to a Class C or Higher Crime. ~~In all proceedings in which the crime charged is murder or a Class A, Class B, or Class C crime, b~~ Before accepting a plea of guilty or nolo contendere to a Class C or higher crime, the court shall ~~insure~~ ensure:

(1) That the plea is made with knowledge of the matters set forth in subdivision (c); and

(2) That the plea is voluntary within the meaning of subdivision (d); and

(3) That there is a factual basis for the charge, as provided in subdivision (e); and

(4) That an unrepresented defendant has knowingly and intelligently waived the defendant's right to counsel.

(c) ~~Insuring~~ Ensuring That the Plea Is Made Knowingly. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The elements of the crime charged, the maximum possible sentence and any mandatory minimum sentence; and

(2) That by pleading guilty or nolo contendere the defendant is ~~relinquishing~~ giving up the right to a trial, at which the defendant would have the following rights:

(A) The right to be considered innocent until proven guilty by the state beyond a reasonable doubt; and

(B) The right to a speedy and public trial by the court or by a jury; and

(C) The right to confront and cross-examine witnesses against the defendant; and

(D) The right to present witnesses on the defendant's behalf and the right to either be or decline to be a witness on the defendant's behalf.

(d) ~~Insuring~~ Ensuring That the Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall determine that the plea is the product of the defendant's free choice and not the result of force, threats or promises other than those in connection with a plea agreement.

The court shall make this determination by addressing the defendant personally in open court.

The court shall inquire as to the existence and terms of a plea agreement, as provided in Rule 11A.

(e) ~~Insuring~~ Ensuring That There Is a Factual Basis for the Plea. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall make such inquiry of the attorney for the state as shall satisfy it that the state has a factual basis for the charge.

(f) ~~Acceptance of a Plea of Guilty to a Class C or Higher Crime Prior to Indictment in District Court.~~ A defendant who, prior to indictment, desires to enter a plea of guilty ~~in the District Court~~ to a charge of a Class A, B, or C crime may in writing waive the defendant's right to ~~appearance and trial in the Superior Court and may waive~~ indictment by a grand jury as provided in Rule 7(b).

If the court refuses to accept the plea or the defendant, after executing the waivers, declines to plead guilty or if a plea of guilty is set aside, the waivers shall be considered withdrawn and the case shall proceed in accordance with these rules as if no waivers had been filed.

~~All proceedings in the District Court shall be reported in such manner that an accurate transcript of the proceedings can be made. Such reporting may be done by means of electronic recording equipment.~~

(g) ~~Transfer for Plea and Sentence.~~ ~~The defendant may, in writing, if a criminal charge is currently pending in a court, request permission to plead guilty or nolo contendere to any other crime the defendant has committed in the state, subject to the written approval of the attorneys for the state, if more than one. Upon receipt of the defendant's written statement and of the written approval of the attorneys for the state the clerk of the court in which a complaint, an indictment or~~

~~an information is pending shall transmit the papers in the proceeding to the clerk of courts for the court in which the defendant is held, and the prosecution shall continue in that court. The defendant's plea of guilty or nolo contendere constitutes a waiver of venue.~~

~~The court receiving a case transferred for plea and sentence shall issue an order that either requires the case to remain in the sentencing court or requires the case to be returned to the originating court.~~

(g) Prerequisites to Accepting a Plea of Guilty or Nolo Contendere to a Class D or Class E Crime From an Unrepresented Defendant. Before accepting a plea of guilty or nolo contendere to a Class D or Class E crime from a defendant who is not represented by retained or appointed counsel or a lawyer for the day, other than as provided in subdivision (j), the court shall address the defendant personally in open court and make such inquiry as to ensure that the plea is knowing, intelligent, and voluntary.

(h) Potential Adverse Immigration Consequences to Noncitizens of a Plea to Any Crime. Before accepting a plea of guilty or nolo contendere for any crime, the court shall inquire whether the defendant was born in the United States. If, based on the defendant's answer, it appears that the defendant is not a United States citizen, the court shall ascertain from defense counsel whether the defendant has been advised of the risk under federal law of adverse immigration consequences, including deportation, as a result of the plea. If no such advice has been provided, or if the defendant is unrepresented, the court shall notify the defendant that the plea can create a risk of adverse immigration consequences, including deportation, and may continue the proceeding in order for counsel to provide the required advice, or, in the case of an unrepresented defendant, for investigation and consideration of the consequences by the defendant. The court is not required or expected to inform the defendant of the nature of any adverse immigration consequences.

(i) Transfer for Plea and Sentence. If a criminal charge for any crime is currently pending in a court, the defendant may, in writing, request permission to plead guilty or nolo contendere to any other crime the defendant has committed in the State, subject to the written approval of the attorneys for the state, if more than one. Upon receipt of the defendant's written statement and of the written approval of the attorneys for the state the clerk of the court in which a complaint, an indictment or an information is pending shall transmit the papers in the proceeding

to the clerk of courts for the court in which the defendant is held, and the prosecution shall continue in that court. The defendant's plea of guilty or nolo contendere constitutes a waiver of venue.

The court receiving a case transferred for plea and sentence shall issue an order that either requires the case to remain in the sentencing court or requires the case to be returned to the originating court.

(j) Acceptance of Guilty Plea by the Clerk to a Charge Punishable by a Fine. At the signed request of the defendant, the clerk of the court may accept a guilty plea upon payment of a fine as set by the court in the particular case, or as set by the court in accordance with a schedule of fines established by the court with the approval of the Chief Judge of the District Court for various categories of such crimes. Acceptance of a plea by the clerk shall be conditioned upon the defendant signing a form acknowledging that the defendant has read and understands the form and understands that, by entering the plea of guilty, the defendant is giving up all of the rights listed on the form, and that the plea will result in a criminal conviction, the punishment for which is the fine paid by the defendant.

Advisory Note – July 2012

The amendment makes a number of nonsubstantive changes to Rule 11, all designed to enhance clarity. Specifically, it:

(1) makes the following changes to the rule's heading: deletes "ACCEPTANCE OF A PLEA TO A CHARGE OF A CLASS C OR HIGHER CRIME"; adds a new category of "SPECIAL CIRCUMSTANCES AS TO ACCEPTANCE OF CERTAIN PLEAS" referring to subdivision (a)(3) [redesignated subdivision(j)], (b) to (f), new (g), and (i) [formerly (g)]; and amends the current reference to subdivision (h) to read "NOTICE TO NONCITIZENS OF POTENTIAL ADVERSE IMMIGRATION CONSEQUENCES OF A PLEA";

(2) adds "for Any Crime" in the heading of subdivision (a);

(3) moves the special circumstance regarding acceptance of a plea and fine by the clerk addressed currently in subdivision(a)(3) to a new subdivision designated (j);

- (4) restates the first sentence in subdivision (b) using a simpler approach;
- (5) adds the words “knowingly and intelligently” to paragraph (4) of subdivision (b);
- (6) replaces the word “insuring,” or a variant thereof, with the word “ensuring,” or a variant thereof, in subdivisions (b), (c), (d), and (e);
- (7) adds the phrase “in a case involving a Class C or higher crime” to the first sentence of subdivisions (c), (d), and (e);
- (8) replaces the word “relinquishing” with the words “giving up” in paragraph (2) of subdivision (c);
- (9) adds the phrase “**Prior to Indictment**” in the heading of subdivision (f) and the words “by a grand jury” after the word “indictment” in its substance;
- (10) redesignates current subdivision (g) as subdivision (i); and
- (11) adds “for any crime” in the first sentence of the new subdivision (i).

In addition, the amendment to Rule 11 makes the following three substantive changes.

First, former subdivision (a)(3), now subdivision (j), is broadened to allow a clerk to accept pleas and fines under the same circumstances in both trial courts. Further, a new condition to the acceptance by a clerk is added requiring that the defendant file a signed form acknowledging that the defendant has read and understands the form and understands that, by entering the plea of guilty, the defendant is waiving all of his or her rights listed on the form, and that the plea will result in a criminal conviction, the punishment for which is the fine paid by the defendant.

Second, a new subdivision (g) has been added to address the prerequisites to a court accepting a plea of guilty or nolo contendere to a Class D or Class E crime from an unrepresented defendant. A lawyer, including a lawyer for the day, may obviate the need for a court to satisfy itself that the plea is knowing, intelligent, and voluntary if the court has expressly been advised that the lawyer has made an

appropriate inquiry of the defendant to ensure the plea is knowing, intelligent, and voluntary.

In many instances, if there is no lawyer representing the defendant, the best practice for the presiding judge will be to have an individual colloquy with the defendant. That colloquy will allow the judge to ensure that the defendant understands the charge and that, by pleading guilty or nolo, the defendant will have a criminal conviction, and understands that she or he is giving up the right to a trial, including a jury trial; the right to be presumed innocent; the right to require the State to prove its case beyond a reasonable doubt; and the right to an attorney, including the right to be considered for an appointed attorney.

Third, the reference to recording of pleas offered in District Court in the last paragraph of subdivision (f) is deleted, as recording requirements for all criminal cases are comprehensively addressed in Rule 27.

6. Rule 27 of the Maine Rules of Criminal Procedure is amended to read as follows:

RULE 27. RECORDING AND TRANSCRIPTS OF PROCEEDINGS

(a) Proceedings Recorded. All proceedings in the District Court or the Superior Court shall be electronically recorded or taken down by a court reporter. All transcripts of trial court proceedings held in the District Court or the Superior Court shall be reproduced in accordance with M.R. Civ. P. 5(i)(2).

(b) Preservation of Record. In all other respects, Rule 76H of the Maine Rules of Civil Procedure governs the procedure for electronic recording in criminal cases, except that all recordings and records pertaining to a criminal proceeding shall be retained until the expiration of any sentence that is longer than the retention period provided for such recordings and records in civil cases by civil Rule 76H(e).

(c) Expenses. Upon appropriate motion, the court shall direct that the state bear any expense for listening to recordings by or preparation of a transcript for indigent defendants who qualify for the assignment of counsel pursuant to Rule 44.

Advisory Note – July 2012

This amendment to Rule 27 changes the name of the rule to indicate that it also governs transcripts and requires parties to file condensed transcripts in accordance with M.R. Civ. P. 5(i)(2).

7. Rule 36(d), (g), and (h) of the Maine Rules of Criminal Procedure are amended to read as follows:

(d) Notice of Appeal. The notice of appeal shall set forth the title of the case and shall designate the adverse ruling making final disposition appealed from. The defendant or defendant's attorney shall file with the notice of appeal an order, as applicable, for either the transcript of the Rule 35 hearing, if held, or an order for the transcript of the revocation proceeding. The transcript order shall conform to Judicial Branch form number CR-165. The notice of appeal and transcript order shall be signed by the defendant or the defendant's attorney. If a notice is not signed, it shall not be accepted for filing. The clerk of the District Court shall mail a date-stamped copy of the notice of appeal and the transcript order form to the attorney for the state and to the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch and note the mailing in the docket.

....

(g) Duty of ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch to Prepare and File Transcript of Rule 35 Hearing or Revocation Proceeding. Unless the Superior Court otherwise directs, within 56 days of receipt of the date-stamped copy of the transcript order, the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch shall file with the clerk of the District Court in the case of an adverse ruling made under subdivisions (a) or (c) of Rule 35 a transcript of the Rule 35 hearing, if held, and in the case of a revocation ruling, a transcript of the revocation proceeding, and furnish copies to the parties.

If the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch anticipates that a 56-day time limit will not be met, the ~~Division~~ Office of Transcript Production shall file an application with the Superior Court requesting additional time at least 5 days before the expiration of the 56-day time limit. The Superior Court shall have discretion 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.

Following the filing of the ordered transcript, the clerk of the District Court will forthwith transmit it to the Superior Court.

(h) Statement in Lieu of Transcript.

(1) *Transcript Unavailable.* In the event an electronic recording of the proceedings is unavailable, the appellant's counsel may prepare a statement of the evidence or proceedings from the best available means, including counsel's recollection, for use instead of a transcript. This statement shall be served on appellee's counsel within 28 days after the filing of the notice of appeal. Appellee's counsel may serve objections or propose amendments thereto within 7 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the District Court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

(2) *Transcript Unnecessary.* When the questions presented by an appeal can be determined without an examination of a transcript of proceedings in the District Court, the parties may prepare and sign a statement showing how the questions arose and were decided and setting forth only so many of the facts offered and proved or sought to be proved as are essential to a decision of the questions by the Superior Court. The statement shall include a concise statement of the points to be relied on by the appellant. It shall be submitted to the District Court within 28 days after the filing of the notice of appeal. If the statement conforms to the truth and is sufficiently complete, the District Court shall approve it for inclusion in the record on appeal.

(3) *Relief from Duty to Prepare Transcript by the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch.* If the parties agree that the preparation of a transcript of the District Court proceeding is unnecessary, they must forthwith seek an order from the Superior Court relieving the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch of its duty to prepare and file a transcript under subdivision (g).

Advisory Note – July 2012

This amendment replaces “Electronic Recording Division” with the current title of the office: “Office of Transcript Production.”

8. Rule 36A(b), (c), and (d) of the Maine Rules of Criminal Procedure is amended to read as follows:

(b) Requesting Preparation of Transcript.

(1) *Requesting Preparation of Trial, Rule 11 or Sentencing Transcript by a Party.* Unless already a part of the Rule 35 appeal record by virtue of Rule 36(h), the appellant may within 7 days of filing the notice of appeal, file with the clerk of the Superior Court and serve upon opposing counsel and the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch, a motion seeking permission from the Superior Court to include in the Rule 35 appeal record all or a portion of the sentencing proceeding, of the trial proceeding or, in a case involving the acceptance of a plea, of the Rule 11 proceeding. Within 7 days of receipt of this motion, opposing counsel may, in like manner, seek to include additional portions not earlier designated.

(2) *Requesting Preparation of Sentencing Transcript by a Party.* Unless already part of the section 1207, section 1233 or section 1349-F appeal record by virtue of Rule 36(i), the appellant may within 7 days of filing the notice of appeal, file with the clerk of the Superior Court and serve upon opposing counsel and the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch, a motion seeking permission from the Superior Court to include within the section 1207, section 1233 or section 1349-F appeal record all or a portion of the sentencing proceeding. Within 7 days of receipt of this motion, opposing counsel may, in like manner, seek to include additional portions not earlier designated.

(c) Duty of ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch to Prepare and File Transcript(s). The clerk of Superior Court shall forthwith send to the parties and to the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch a date-stamped copy of the Superior Court order making the final disposition of the motion or motions filed pursuant to subdivision (b). If the disposition by the Superior Court authorizes preparation, unless the Superior Court otherwise directs, within 56 days of receipt of the date-stamped copy of the order the ~~Electronic~~

~~Recording Division~~ Office of Transcript Production of the Judicial Branch shall file the transcript with the clerk of the District Court and furnish copies to the parties. If the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch anticipates that the 56-day limit will not be met, the ~~Division~~ Office of Transcript Production shall make application for an extension as provided in Rule 36(g).

In the case of an indigent defendant, the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch shall be compensated out of ~~Judicial Department~~ Maine Commission on Indigent Legal Services funds. A nonindigent defendant shall make satisfactory financial arrangements with the ~~Division~~ Office of Transcript Production or its agent within 7 days after receipt of the date-stamped copy of the Superior Court's order granting his or her motion requesting preparation of all or a portion of a sentencing, trial or Rule 11 transcript.

....

(d) Clerk's Responsibilities as to the Appeal Record.

(1) *Clerk's Responsibilities as to Rule 35 Appeal Record.*

(A) Subdivision (a), Paragraph (1) Materials Except for any Transcripts. Within 21 days of the filing of the notice of appeal by the appellant the clerk of the District Court shall file with the clerk of the Superior Court the contents of the Rule 35 appeal record under subdivision (a), paragraph (1), with the exception of any transcripts, and furnish copies to the parties. ~~An indigent defendant may have a copy without charge.~~ A nonindigent defendant shall pay for a copy at a rate to be set by the Chief Justice of the Supreme Judicial Court ~~for nonindigent appellants.~~ An indigent defendant who wishes to obtain a copy must file a request for the copy along with a request that it be paid for by funds from the Maine Commission on Indigent Legal Services.

(B) Transcripts. Following receipt of the original of the transcript of the hearing relative to the Rule 35 motion, if any, the clerk of the District Court shall forthwith transmit it, along with the original of other previously filed transcript, if any, that is part of the Rule 35 appeal record, to the clerk of the Superior Court. Thereafter, following the filing of any additional transcript by the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch that is

part of the Rule 35 appeal record, the clerk shall forthwith transmit the original to the clerk of Superior Court.

(C) Notice by the Clerk of the Superior Court to the Parties. Upon docketing of all of the documents and transcripts making up the Rule 35 appeal record, the clerk of the Superior Court shall send forthwith to each counsel of record a written notice showing the date on which the appellant's and the appellee's briefs are to be filed, the date on which the appellant's reply brief, if any, is due to be filed and the date on which the case will be in order for oral argument.

(2) *Clerk's Responsibilities as to the Section 1207, Section 1233 or Section 1349-F Appeal Record.*

(A) Subdivision (a), Paragraph (2), Materials Except for any Transcripts. Within 21 days of the filing of the notice of appeal by the appellant the clerk of the District Court shall file with the clerk of the Superior Court the contents of the section 1207, section 1233 or section 1349-F appeal record under subdivision (a), paragraph (2), with the exception of any transcripts, and furnish copies to the parties. ~~An indigent defendant may have a copy without charge. A nonindigent defendant shall pay for a copy at a rate to be set by the Chief Justice of the Supreme Judicial Court for nonindigent appellants.~~ An indigent defendant who wishes to obtain a copy must file a request for the copy along with a request that it be paid for by funds from the Maine Commission on Indigent Legal Services.

(B) Transcripts. Following receipt of the originals of the transcript of the hearing relative to the section 1207, section 1233 or section 1349-F motion, if any, the clerk of the District Court shall forthwith transmit it, along with the original of other previously filed transcripts, if any, that is part of the section 1207, section 1233 or section 1349-F appeal record, to the clerk of the Superior Court. Thereafter, following the filing of any additional transcript by the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch that is part of the section 1207, section 1233 or section 1349-F appeal record, the clerk shall forthwith transmit the original to the clerk of Superior Court.

(C) Notice by the Clerk of the Superior Court to the Parties. Upon docketing of all the documents and transcripts making up the section 1207, section 1233 or section 1349-F appeal record, the clerk of the Superior Court shall send forthwith to each counsel of record a written notice showing the date on which the

appellant's and the appellee's briefs are to be filed, the date on which the appellant's reply brief, if any, is due to be filed and the date on which the case will be in order for oral argument.

Advisory Note – July 2012

The second paragraph of Rule 36A(c) addresses financial responsibility for transcript production. Upon the establishment of the Maine Commission on Indigent Legal Services, the funds allocated for the representation of indigent persons were transferred from the Judicial Branch to the Maine Commission on Indigent Legal Services. This amendment clarifies that transcripts produced for those indigent parties represented by court appointed or court assigned counsel are to be paid for by the Maine Commission on Indigent Services.

This amendment also replaces “Electronic Recording Division” with the current title of the office: “Office of Transcript Production.”

9. Rule 36B(a) of the Maine Rules of Criminal Procedure is amended to read as follows:

(a) Appeal to the Superior Court. An appeal may be taken by a juvenile or a juvenile's parents, guardian, or legal custodian as provided in 15 M.R.S. § 3402(1) and (2), from an adjudication, an order of disposition or modification thereof, a detention order, or refusal to modify a detention order, and, subject to the limitations stated in 15 M.R.S. § 3311-D, from a finding of failure to comply with a deferred disposition order, to the Superior Court in the county in which the juvenile crime was committed. An appeal may be taken by the State, pursuant to 15 M.R.S. § 3402(3), from the failure of a juvenile court to order a bind-over.

An appeal is taken by filing a notice of appeal with the clerk of the District Court. The notice of appeal shall conform to the appropriate form prepared by the Judicial Branch Forms Committee. 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 utilizing the appropriate Judicial Branch form. The clerk of the District Court shall transmit date-stamped copies of the notice of appeal and transcript order to the ~~Electronic Recording Division~~ Office of Transcript Production of the ~~District Court~~ Judicial Branch, the clerk of the Superior Court, and the appellee. The clerk of the District Court shall also transmit a copy of the

docket entries to the clerk of the Superior Court. If the appellant orders less than the entire transcript of proceedings, the appellee shall have 7 days in which to order additional portions of the transcript utilizing the appropriate Judicial Branch form.

Advisory Note – July 2012

This amendment to the second paragraph of Rule 36B(a) replaces the “District Court” with “Judicial Branch” and replaces “Electronic Recording Division” with the current title of the office: “Office of Transcript Production.”

10. Rule 36C(d) and (e) of the Maine Rules of Criminal Procedure are amended to read as follows:

(d) Filing of Transcript. The ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch shall file the transcript of proceedings with the clerk of the Superior Court and furnish copies to the parties within 56 days of the filing of the notice of appeal. If the ~~Electronic Recording Division~~ Office of Transcript Production of the Judicial Branch anticipates that it will be unable to meet the 56-day time limit, it shall file an application with the Superior Court requesting additional time at least 5 days before the expiration of the 56-day time limit. The Superior Court shall have discretion to grant reasonable enlargements of time. Notwithstanding this or any other provision of these rules, the party requesting the transcript shall exercise due diligence to assure its timely filing.

(e) Motion to Dispense With Transcript. The appellant may move pursuant to 15 M.R.S. § 3405(2) to substitute the untranscribed sound recording or an agreed or settled statement of facts for the transcript of the proceedings in the juvenile court. In the event the Superior Court, in the interest of justice, orders such substitution, the clerk of the Superior Court shall transmit copies of the order to the clerk of the District Court and to the ~~Electronic Recording Division~~ Office of Transcript Production. A statement in lieu of transcript shall be prepared pursuant to Rule 36(g) and shall be approved by the juvenile court. A statement shall be filed with the clerk of the Superior Court within the time provided for the filing of a transcript. An untranscribed sound recording shall be provided to the clerk of the Superior Court forthwith.

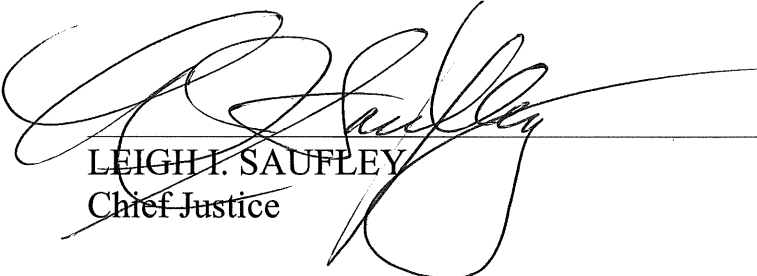
Advisory Note – July 2012

This amendment to Rule 36C(d) and (e) replaces the “District Court” with “Judicial Branch” and replaces “Electronic Recording Division” with the current title of the office: “Office of Transcript Production.”

11. These amendments shall be effective September 1, 2012.

Dated: July 25, 2012

FOR THE COURT¹



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

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