

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

2012 Me. Rules 14

Effective: October 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)(5) of the Maine Rules of Appellate Procedure is amended to read as follows:

(5) The clerk shall mail a date stamped copy of the notice of appeal and transcript order form to (i) the Clerk of the Law Court; (ii) the court reporter or ~~Electronic Recording Division~~ Office of Transcript Production; and (iii) the attorney of record of each party other than the appellant, or, if a party is not represented by an attorney, then to the last known address of that party, but the clerk's failure to do so does not affect the validity of the appeal. This notification is sufficient notwithstanding the death of the party or of the party's attorney prior to the giving of the notification. In any action under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8101 et seq., a copy of any notice of appeal that is filed shall be mailed by the clerk to the Attorney General at the same time as that notice is mailed to the parties to the action. The clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing.

Advisory Note – October 2012

The amendment is a technical change to recognize the new title for what is now called the Office of Transcript Production.

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

(b)(1) Transcript: Criminal Cases.

Except as otherwise designated, the standard transcript on appeal shall include the testimony of the witnesses at trial, any bench conferences and the charge to the jury.

Appellant's counsel may add portions to, or delete portions from, this standard transcript by utilizing the requisite Judicial Branch form. Appellant's counsel shall delete from the standard transcript any portion not necessary for purposes of the appeal.

Within seven days of receipt of appellant's transcript order, appellee's counsel may order additional portions of the transcript by utilizing the requisite Judicial Branch form. A copy of the transcript order shall be filed with the Clerk of the Law Court and served on appellant's counsel.

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

An indigent appellant is an appellant who has been determined indigent: (1) by the trial court before verdict pursuant to M.R. Crim. P. 44(b); (2) by the trial court after verdict pursuant to M.R. Crim. P. 44A(b); or (3) by a justice of the Supreme Judicial Court pursuant to M.R. Crim. P. 44A(c).

(2) Transcript: Civil Cases.

(A) With the notice of appeal and transcript order form, the appellant shall file a statement of the issues the appellant intends to present on the appeal and shall serve on the other parties a copy of the order form and of the statement. The statement of issues is for initial guidance of the parties in developing the record and transcript orders but does not preclude raising other properly preserved issues on appeal. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. If any appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 7 days after the service of the order or certificate and the statement of the appellant, file with the Clerk of the Law Court

and serve on the appellant a designation of additional parts to be included. Unless within 7 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following seven days either order the parts or move in the Law Court for an order requiring the appellant to do so.

(B) Within 7 days of filing the notice of appeal and transcript order form, a party must make satisfactory arrangements with the reporter or other person from whom the transcript is ordered for payment of the cost of the transcript. In every instance in which ~~an Official Court Reporter or the Electronic Recording Division~~ a reporter or the Office of Transcript Production requests a deposit prior to beginning production of a transcript, that deposit shall be paid within 7 days of the date on which the attorney, litigant or other interested person was notified of the amount of the deposit. In the event that the deposit has not been paid within the required time, the ~~Official Court Reporter or the Electronic Recording Division~~ reporter or the Office of Transcript Production shall consider the order canceled and shall so inform the clerk of the Law Court, the party ordering the transcript and the court in which the transcript was to be filed. The appeal or other matter shall then proceed without the transcript.

Advisory Note – October 2012

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

3. 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 that the record on appeal is complete. The appellee shall file the appellee's brief within 105 days (15 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within 14 days (2 weeks) after the date that the appellee's brief is ~~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 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 – October 2012

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

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

(a)(1) Clerk's Office and Filing. All papers required by these Rules to be filed with the Law Court or with any Justice of the Law Court shall be filed with the Clerk of the Law Court. Filing shall occur at the office of the Clerk of the Law Court, 205 Newbury Street, ~~P.O. Box 368~~ Room 139 Portland, Maine ~~04112-0368~~ 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.

Advisory Note – October 2012

The amendment recognizes the new address for the Law Court Clerk's Office.

5. Rule 13(c) of the Maine Rules of Appellate Procedure is amended to read as follows:

(c) Further Costs in the Law Court. Costs in the Law Court shall also be allowed as follows:

(1) Travel and attendance as in the trial court;

(2) Costs for transcripts made by an ~~official~~ reporter may be taxed at the rate actually paid to the reporter, not exceeding the rate established by

order of the Chief Justice of the Supreme Judicial Court. Costs for copies of the appendix may be taxed at the rate actually paid for reproduction, not exceeding \$5.00 per page for pages averaging 240 words each (exclusive of initials “Q” and “A”); and

(3) Other allowable items of costs as determined by the provisions of M.R. Civ. P. 54(d)-(g), when such items are incident to the appeal.

Advisory Note

The amendment makes the reference to “a reporter” consistent with the definition in Rule 16(4).

6. These amendments shall be effective October 1, 2012.

Dated: September 20, 2012

FOR THE COURT ¹

/s/

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.