

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF APPELLATE PROCEDURE

2016 Me. Rules 03

Effective: July 29, 2016

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 the amendments. The Advisory Note states the reason for recommending the amendments, but the Advisory Note is not part of the amendments adopted by the Court.

1. Rule 19(a), (d), and (f) of the Maine Rules of Appellate Procedure are amended to read as follows:

RULE 19. DISCRETIONARY CRIMINAL APPEALS

(a) Appeals Covered. This rule covers those criminal appeals, ~~which~~ 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. The appeals covered by this rule include:

- (i) An appeal from a ruling ~~by the Superior Court, but not by the District Court,~~ 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;
- (ii) An appeal by a person whose probation is revoked ~~by the Superior Court, but not by the District Court,~~ when the appeal is authorized pursuant to 17-A M.R.S. § 1207~~(2)~~ (1);
- (iii) An appeal by a person whose supervised release is revoked ~~by the Superior Court, but not by the District Court,~~ when the appeal is authorized pursuant to 17-A M.R.S. § 1233;

- (iv) An appeal by a person determined to have inexcusably failed to comply with a court-imposed ~~deferment~~ deferred disposition requirement and thereafter sentenced, when the appeal is authorized pursuant to 17-A M.R.S. § 1348-C;
- (v) An appeal by a person whose administrative release is revoked ~~by the Superior Court, but not by the District Court,~~ when the appeal is authorized pursuant to 17-A M.R.S. § 1349-F;
- (vi) 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;
- (vii) An appeal from a final judgment in an extradition proceeding pursuant to 15 M.R.S. § ~~210-A~~ 210-B(1), when the appeal is taken by the petitioner; ~~and~~
- (viii) 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 ~~either~~ by the convicted person or by the State; ~~and~~
- (ix) 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
- (x) An appeal from a final judgment entered under 15 M.R.S. § 2254(5) or (7), pursuant to 15 M.R.S. § 2258(1), when the appeal is taken by the person who filed the motion for obtaining the special restrictions on dissemination and use of criminal history record information relating to a qualifying criminal judgment.

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(d)(1) Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal. Unless the Law Court otherwise directs, within 56 days of receipt of a copy 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 in

the event that a hearing on the matter was held and recorded. The transcript shall be filed in accordance with M.R. App. P. 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:

- (i) For an appeal from a ruling ~~by the Superior Court~~ on a motion for correction or reduction of sentence, the hearing, if any, on the motion for correction or reduction of sentence.
- (ii) For an appeal from a ruling ~~by the Superior Court~~ on a motion for revocation of probation, the hearing on the motion for revocation of probation.
- (iii) For an appeal from a ruling ~~by the Superior Court~~ on a motion for revocation of supervised release, the hearing on the motion for revocation of supervised release.
- (iv) For an appeal from a ruling of inexcusable failure to comply with a court-imposed ~~deferment~~ 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.
- (v) For an appeal from a ruling ~~by the Superior Court~~ on a motion for revocation of administrative release, the hearing on the motion for revocation of administrative release.
- (vi) For an appeal from a final judgment in a post-conviction review proceeding, the hearing on the motion for post-conviction relief, if any.
- (vii) For and appeal from a final judgment in an extradition proceeding, no transcript as specified by Rule 19(d)(2).
- (viii) For an appeal from a ruling on a motion to order DNA analysis, the hearing on the motion to order DNA analysis.
- (~~viii~~ix)(A) 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.

(B) 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.

(x) 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) Extradition Hearings. No transcript shall be prepared of any hearing on a petition contesting extradition. In lieu of a transcript of hearing, the justice or judge of the District Court who heard the petition for extradition shall, within 10 days of 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. 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 ~~District Court Judge~~ 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.

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(f) Granting of a Certificate of Probable Cause. If the Law Court issues a certificate ~~of~~ 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 or probable cause shall be treated in the same manner as the filing of a notice of appeal pursuant to M.R. App. P. 2(b)(2). If an appeal is pending under M.R. App. P. 2 involving the same criminal judgment, the Rule 19 appeal shall be treated as part of the Rule 2 appeal.

Advisory Note – July 2016

Rule 19 is amended in the following respects.

(1) Rule 19(a) is amended to add numbers for each separate appeal addressed and have those numbers correspond to the existing amended numbers in Rule 19(d)(1). The numbering and organization in Rule 19(d) is altered to (1) add a reference to extradition appeals, (2) add letters to the similarly numbered record choices for factual innocence appeals, and (3) add a reference for the record of criminal history record appeals.

(2) Rule 19(a) is amended to change the words “criminal appeals, which are subject to preliminary review” to “those criminal appeals that are subject to preliminary review.”

(3) Rule 19(a) is amended to correct the statutory reference addressing an appeal by a person whose probation is revoked to reflect new 17-A M.R.S. § 1207(1), enacted by P.L. 2015, ch. 431, § 41 (effective July 29, 2016).

(4) In Rule 19(a), the words “by the Superior Court, but not by the District Court,” are omitted. The Superior Court is no longer hearing appeals from the District Court. The Supreme Judicial Court has taken over that function in the form of a discretionary appeal. See M.R.U. Crim. P. 36.

(5) In Rule 19(a), the citation to former “M.R. Crim. P. 35(a) or (c)” is replaced by a cite to “M.R.U. Crim. P. 35(a) or (c).”

(6) In Rule 19(a)(iv) and (d)(1)(iv), the term “deferment” is changed to “deferred disposition.”

(7) In Rule 19(a), the statutory reference to “15 M.R.S. § 210-A” is corrected to reflect current 15 M.R.S. § 210-B(1).

(8) In Rule 19(a), the provision regarding appeal from an order on a motion to order DNA analysis is reworded for clarity. The words “when the appeal is taken either by the convicted person or the State” are replaced with, “when the appeal is taken by the convicted person or by the State.”

(9) Rule 19(a) and 19(d)(1) are amended to account for a new discretionary appeal to the Law Court, which now exists pursuant to 15 M.R.S. § 2258(1),

enacted by P.L. 2015, ch. 354, §1 (effective October 15, 2015, but with a sunset of October 1, 2019). That statute creates a discretionary appeal procedure from a judgment in a proceeding where a person seeks a court determination that he or she has satisfied the statutory prerequisites specified in 15 M.R.S. § 2252 that allow restrictions on the dissemination and use of criminal history record information relating to a criminal conviction, *see* 15 M.R.S. §§ 2254(5), 2255, or from a subsequent judgment that the person has been convicted of a new crime and is therefore no longer eligible for such restrictions, *see* 15 M.R.S. §§ 2254(7), 2255.

(10) Rule 19(d)(1) is amended to omit the words “by the Superior Court” because of the institution of the Unified Criminal Docket statewide.

(11) Rule 19(d)(2) is amended to change references to the judge of the District Court to the “justice or judge” and the “trial court” because of the institution of the Unified Criminal Docket statewide.

(12) Rule 19(f) is amended to correct a typographical error.

2. These amendments shall be effective on July 29, 2016.

Dated: July 20, 2016

FOR THE COURT*

/s/

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

THOMAS E. HUMPHREY

Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.