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

2017 Me. Rules 07

Effective: September 1, 2017

All of the Justices concurring therein, the following amendments restyling 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 the understanding of the amendments, an Introductory Note to the 2017 restyling of the Rules appears before the text of the restyled Rules, and Restyling Notes appear after the text of each restyled Rule. The Introductory Note and the Restyling Notes state the reasons for recommending the restyling amendments, but the Introductory Note and the Restyling Notes are not part of the amendments adopted by the Court.

1. The Introductory Note to the 2017 restyling of the Maine Rules of Appellate Procedure describing the history of the Maine Rules of Appellate Procedure, the purposes of the restyling, and the significant substantive changes in the Rules is adopted to read as follows:

MAINE RULES OF APPELLATE PROCEDURE

INTRODUCTORY NOTE: 2017 RESTYLING

The Maine Rules of Appellate Procedure were originally drafted and approved in 2000, taking effect January 1, 2001. They were approved concurrently with other significant statutory and rules changes affecting court practice, including placement of exclusive jurisdiction over domestic relations matters with the District Court, and implementation of direct appeals from most District Court criminal and civil judgments to the Law Court, eliminating intermediate appeals through the Superior Court.[1]

[1] Statewide adoption of the Maine Rules of Unified Criminal Procedure in 2015 resulted in further reduction of appeals from the District Court to the Superior Court by eliminating intermediate or final appeals to the Superior Court in bail and probation related matters.

The 2001 changes required significant adjustment of practices for taking most appeals from the District Court. To simplify the transition in appellate practice, the Supreme Judicial Court elected to develop the Maine Rules of Appellate Procedure utilizing appeal provisions from the then existing Maine Rules of Civil Procedure and Maine Rules of Criminal Procedure. Except for a completely new rule governing development of the appendix, M.R. App. P. 8, the new rules generally tracked provisions that appeared in either the Civil Rules, the Criminal Rules, or a combination of both.

The rule drafting style of the Civil Rules and Criminal Rules, transitioned into the Maine Rules of Appellate Procedure, was based on drafting practices of the 1950s through the 1970s, when each of the major Maine rules governing court practice and ethics practice was developed. That drafting practice included rules that were divided by rule number, subdivisions, and then paragraphs, but with many relatively long paragraphs that sometimes included, under a single paragraph heading, sentences addressing several issues without further numbering or separation within the paragraphs. This drafting style had the advantage of aggregating under one heading the rules directions related to that heading. However, the individual rules directions within the paragraphs were more difficult to identify and could be missed by attorneys and members of the public who were not thoroughly familiar with rules practice.

In the past decade, several initiatives, nationally and within the State of Maine, have focused on making court rules more understandable to the bench, the bar, and the public by modernizing the language of rules that were based on practice and experience from the 1950s through the 1970s. Besides modernizing language, changes included revising large paragraphs to separate each direction within the paragraphs into individually numbered, or at least individually separated, provisions. On some subjects, the American Bar Association developed revised model rules for areas such as attorney ethics and professional conduct, attorney discipline and enforcement, and judicial conduct. The ABA drafts were utilized, in each instance with adjustments to recognize differences in Maine practice, to develop the Maine Rules of Professional Conduct, adopted in 2009, the revised Maine Bar Rules, adopted in 2015, and the revised Maine Code of Judicial Conduct, also adopted in 2015.

A separate initiative led to the restyling of the Federal Rules of Evidence, effective in 2012. This restyling resulted in division of large paragraphs containing several directions into separate smaller subdivisions focused on one subject or direction in implementing the rules. The Maine Rules of Evidence had been based on the Federal Rules of Evidence. After adoption of the restyled Federal Rules of Evidence, the Advisory Committee on the Maine Rules of Evidence initiated a restyling of the Maine Rules of Evidence, implementing the more modern language and drafting practices, and the restyled set of rules was adopted, effective January 1, 2015.

The Maine Supreme Judicial Court initiated review of the Maine Rules of Criminal Procedure, necessitated by the statewide implementation of Unified Criminal Dockets. The unification of criminal processes began with rules initiatives in Cumberland County in 2009 and continued progressively through several other counties until statewide adoption of the Maine Rules of Unified Criminal Procedure in 2015.

Following these other rule revisions, in 2015 the Supreme Judicial Court initiated a restyling of the Maine Rules of Appellate Procedure to bring into appellate practice the more modern language and drafting style recognized in other recent rule revisions. The draft restyled Maine Rules of Appellate Procedure, developed with the assistance of the Advisory Committee on the Maine Rules of Appellate Procedure, incorporate more modern language and the greater internal paragraph separation and numbering practice utilized in other rules revisions. Like the restyled Rules of Evidence, this revision generally tracks the numbering of the existing rules to aid in reading and understanding the restyled rules and identifying relevant precedent addressing each rule.

Within this restyling, several numbering changes are of note. Rule 2, which addressed several different issues, is separated into three rules: Rule 2A addressing the notice of appeal and filing the appeal; Rule 2B addressing the time for filing an appeal and extension of time for filing an appeal upon timely filing of certain motions; and Rule 2C, applicable to civil cases, addressing cross-appeals, multi-party appeals, and appeal bonds. Rule 8, controlling drafting of the appendix to the briefs, is reorganized to place its most important requirements earlier in the Rule structure. What was formerly Rule 9 relating to form and content of briefs becomes Rule 7A to immediately follow Rule 7. This puts the two rules that address briefing

together within the body of the rules. What were formerly Rule 15, addressing time computation, and Rule 16, addressing definitions, are redesignated as Rules 1A and 1B to appear at the start of the revised rules, as their terms govern the rules that follow.

There are some substantive changes to recognize matters identified as a result of practice implementing the Maine Rules of Appellate Procedure over the past two decades, and to recognize modernization of practice in other Maine Rules or the Federal Rules of Appellate Procedure as applied in the First Circuit.

The substantive changes within the restyling of the Maine Rules of Appellate Procedure are as follows:

1. The need to identify potential issues on appeal as part of the filing of the notice of appeal from a civil judgment, stated in current Rules 2(a)(2) and 5(b)(2), is eliminated. In practice, this requirement proved not particularly useful, and sometimes counterproductive, as when an appeal is prosecuted or defended by a different attorney than handled the matter in the trial court.

2. Rule 2A(b)(2) is new and addresses appearances by counsel or an unrepresented party in an appeal. The Rule is designed to reduce uncertainty as to which parties, other than appellants, who were parties to a trial court or administrative proceeding that is subject to an appeal will participate in the appeal.

3. Rule 2A(e) adds a clarification that documents returned by the trial court clerk as insufficient are not deemed to be filed for purpose of calculating compliance with any time limits. This clarification reflects current practice but had not been stated in the Appellate Rules.

4. Former Rules 2(b)(2) and 2(b)(3), restyled as Rules 2B(b) and 2B(c), are amended to clarify that there is no need to file a notice of appeal from an original judgment while timely post-judgment motions, listed in the Rules, are pending in the trial court. An appeal can instead be taken from the order on that post-judgment motion, within 21 days after its entry, and that single notice of appeal, following ruling on the post-judgment motion, will be

treated as an appeal from both the original judgment and the post-judgment order.

In the alternative, a notice of appeal can be filed within 21 days after the entry into the docket of the original judgment, and the subsequent timely filing of certain post-judgment motions does not render ineffective the previously filed notice of appeal. The previously filed notice of appeal preserves for review any claim of error in the original judgment and in the order of the post-judgment motion. Former Rule 2(b)(4), relating to preservation of issues in an appeal filed after a ruling on a post-judgment motion is removed, and the content is instead made part of Rules 2B(b) and 2B(c).

5. Rule 2B(a)(2) is added, indicating that parties who are present in court when a particular final judgment or other court action is announced by the court or who, while at the courthouse after the court's announcement, sign a document signifying acknowledgment of the court's action, are presumed to have learned of the entry of judgment at that time. The amendment is designed to minimize claims of lack of knowledge of entry of judgments at later times when appeal deadlines may have been missed and parties seek to either reopen or collaterally attack a judgment.

6. Rule 2C(a)(1) clarifies when an appellee must file a cross-appeal to preserve an issue. If a change in the judgment is sought, a cross-appeal must be filed.

7. Rule 3 is amended to clarify that the trial court retains authority to act on certain post-judgment motions, as provided by Rule 3(c), without leave of the Law Court. Rule 3(d) is added to outline the procedure for seeking leave of the Law Court to permit trial court action not otherwise permitted by Rule 3(c).

8. In Rule 3(c)(4), a ruling on a motion to dismiss that does not resolve all pending claims is added to the list of trial court orders from which an appeal may be taken without causing the trial court to cease action on the matter pending resolution of the appeal. The change results in rulings on motions to dismiss being treated the same as rulings on motions for summary judgment, which are already addressed in the rule. Adding the reference to motions to dismiss creates no approval for interlocutory appeals. It only

notes that while such interlocutory appeals are pending, trial court consideration of the case can continue.

9. Rule 4(a)(2)(B) is added to specify the time within which a cross-appeal may be voluntarily dismissed. This Rule and Rule 7A(f)(1), relating to length limits for briefs, address the particular circumstances of cross-appeals that are recognized in the Federal Rules, but have not previously been recognized in the Maine Rules.

10. In Rule 5(b)(1)(A), the standard transcript in criminal cases is expanded to include closing arguments in jury trials and hearings on motions to suppress or motions in limine, if a ruling on such motions is an issue on appeal, and sentencing hearings, if sentencing is an issue on appeal. As presently, the appellant is responsible for ordering the transcript; the transcript is not ordered by the court.

11. In the discussion of civil transcripts in Rule 5(b)(2)(B)(iii), reference is made directly to M.R. Civ. P. 91(f)(2), addressing the circumstances in which, for indigent parties, a recording or statement in lieu of a transcript may be submitted in lieu of a transcript for parties who request such and are qualified for such in the trial court pursuant to M.R. Civ. P. 91(f).

12. Rule 6(a)(1) is revised to introduce a 28-day period in which the trial court clerk will retain the trial court record for most appeals. The purpose of the change, concurrent with amendment to Rule 3(b)-(d) and Rule 6(a)(2), is to hold the record in the trial court to allow for the filing and trial court resolution of timely post-judgment motions listed in Rules 2B(b)(2) and 2B(c)(2).

As part of the change in the time for filing the record in the Law Court, the Rule is also amended to clarify that the record in extradition appeals must be filed within 7 days after filing of the notice of appeal. The amendment to restyled Rule 6(a)(3) also clarifies that the trial court record may be temporarily retained for an additional period of time, by order of the trial court or stipulation of the parties, when such a retention is necessary, for example, to accomplish trial court action permitted by Rule 3(c) of these rules.

13. Rule 6(b)-(d) is subject to significant editing to recognize more modern issues and developments relating to preparing records and the

context of records, particularly the treatment of videos and digital evidence and the means by which such videos and digital evidence may be prepared and transmitted to the Law Court. Further, the portion of the rule regarding what may be retained in the trial court is expanded to include other items that, absent court order or apparent need, should be retained with the trial court file rather than transmitted as part of the appeal to the Law Court.

14. Rule 6(d) is added, addressing direct appeals to the Law Court from proceedings in which a record may be prepared only in electronic or digital format, without a printed or paper copy of the record. In such appeals, the record filed with the Law Court must include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself must include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

15. The Track A briefing schedule in Rule 7(b)(1) is expanded to include appeals of any parentage proceeding as defined in the Maine Parentage Act.

16. In the briefing schedule for those appeals not subject to the Track A briefing schedule, Rule 7(b)(2), the two-week time for a reply brief is changed to three weeks in consideration of delays that may be encountered in receiving an appellee's brief.

17. Standards for filing and consideration of a motion to expedite an appeal are added to Rule 7(b)(4). A motion to expedite may be filed in any appeal, rather than just in Track B appeals, as in current Rule 7(b)(2).

18. Rule 7A(a)(6) adopts a list of items that may not be included in or attached to a brief. A similar limitation applies to the appendix pursuant to Rule 8(g)(1)-(3).

19. The length limits for briefs are placed in one paragraph, Rule 7A(f)(1), rather than being stated separately for each category of briefs filed. The allowable length of a brief is reduced from 50 pages to 40 pages for the principal brief of an appellant, an appellee, or an amicus and from 20 pages to 15 pages for any reply brief. Word limits are added as an alternative way to measure length of briefs: 10,000 words for a principal brief,

4,500 words for a reply brief. A 50-page or 13,000-word limit is adopted for an appellee's brief that also supports that appellee's cross-appeal. A 30-page or 9,000-word limit is adopted for an appellant's reply brief that also addresses an appellee's cross-appeal. As presently, longer briefs may be filed, but only with approval of the Court upon a showing of good cause.

The 40- and 15-page limits compare to limits of 30 pages for principal briefs and 15 pages for reply briefs in Federal Rule of Appellate Procedure 32(a)(7)(A). The Federal Rules of Appellate Procedure, revised effective December 1, 2016, have page size and format requirements similar to those in the Maine Rules of Appellate Procedure, including the 14-point font requirement. Fed. R. App. P. 32(a)(4), (5). The Federal Rules of Appellate Procedure do offer another two alternatives for counting length of a brief, either a word limit (13,000 words) or a line limit (1,300 lines). Fed. R. App. P. 32(a)(7)(B). For federal appeals, a reply brief has a word limit of one half of the principal brief. *Id*.

20. Rule 7A(g)(1)(B) is adopted permitting the filing, with the electronic copy of a brief, of an electronic certificate of signature that, for qualifying counsel, may avoid the necessity of signing a print copy of a brief.

21. Rule 7A(i)(2) is amended to require the filing of one electronic copy of each brief, rather than being optional as in the present Rule. *See* First Circuit Local Rule 32.0(a) (requiring, when a party is represented by counsel, the filing of one copy of a brief over 10 pages in length on a "computer readable disk").

22. Rule 7A(j) is adopted to recognize current practice allowing a party to an appeal to submit a letter indicating supplemental or newly discovered authorities to support an appeal up to the time of oral argument or six weeks after the deadline for filing the appellee's brief in an appeal in which oral argument has not been scheduled. This amendment, and its 350-word limit, is similar to Fed. R. App. P. 28(j), though the Federal Rule allows submission of post-argument briefs by permitting such letters anytime "before decision." The draft would allow post-argument filings only on the invitation of the Court.

23. Because of the frequency of observed problems in complying with the directions in the Rules regarding the appendix, Rule 8 is significantly

reorganized. The mandatory items that must be included in the appendix are now identified in Rule 8(d) and (e). The mandatory items are also expanded to include pre- or post-judgment motions that are at issue on appeal, wills, deeds, leases, trusts, or insurance policies that are at issue on appeal, guardian ad litem reports, if any, when parental rights are at issue on appeal, and several items related to criminal appeals.

24. The list of materials that may not be included in the appendix, stated in Rule 8(g)(1)-(4), is expanded to include any documents that are, or include, pictures, videos, or other images (A) of minor children, (B) of adults subject to a guardianship or mental health commitment proceeding, or (C) that depict nudity or sexual or sexualized acts; and, for cases other than child protective proceedings, any documents made confidential by statute or court order and not required to be included in the appendix by subdivisions (d) or (e).

25. Rule 10(a)(2) is adopted to require that an attorney representing a party in an appeal who seeks an extension of time or a delay of more than 7 days, or who seeks a continuance of any scheduled hearing, oral argument, or other court proceeding, must notify the party represented by that attorney of the request for an extension of time or continuance.

26. As with briefs, the amended Rule 10(d) requires that the text of motions, other than footnotes or quotations, must be in 14-point font. *See* Fed. R. App. P. 27(d)(1) (cross-referencing to the page formatting requirements for briefs).

27. Rule 13(b)(1) is amended to limit recoverable costs for briefs to 70 pages for a principal brief and 20 pages for a reply brief. The current Rule 13(b) limits recoverable costs for briefs to a total of 75 pages.

28. Rule 14(a)(2) is amended to specify that, as with criminal appeals, addressed in Rule 14(a)(1), the mandate of the Law Court in a civil appeal involving a child protective matter, a parental rights matter, a guardianship, a contempt, or a temporary or permanent injunction shall issue the day of or the day after decision. Concurrently with this change, the process to stay the mandate or otherwise seek further review after certification is clarified.

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2. The Maine Rules of Appellate Procedure are repealed and replaced to read as follows:

STATE OF MAINE
SUPREME JUDICIAL COURT

MAINE RULES OF APPELLATE PROCEDURE

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I. GENERAL APPEAL PROCEEDINGS

MAINE RULES OF APPELLATE PROCEDURE

I. GENERAL APPEAL PROCEEDINGS

RULE 1. SCOPE OF RULES

These Rules govern the procedure for review of any judgment, order, or ruling by a Unified Criminal Docket, the District Court, the Superior Court, the Business and Consumer Docket, the Probate Courts, a single justice of the Supreme Judicial Court, or consideration of a question certified by the federal courts, which is by law reviewable by the Law Court. They shall be construed to secure the just, speedy, and inexpensive determination of every appeal.

The restyled Maine Rules of Appellate Procedure shall apply to all appeals in which the notice of appeal is filed on or after September 1, 2017.

Restyling Notes – June 2017

Rule 1 is changed to add references to the Unified Criminal Dockets, the Business and Consumer Docket, and questions certified by the federal courts and to indicate a September 1, 2017, effective date for the restyled rules.

RULE 1A. TIME COMPUTATION

In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

When the period of time prescribed or allowed is 6 days or fewer, intermediate Saturdays, Sundays, legal holidays, and days when, by order of the Chief Justice of the Supreme Judicial Court, pursuant to M.R.U. Crim. P. 54(b) or M.R. Civ. P. 77(c), the clerk's office is closed, shall be excluded in the computation. When the office of the Clerk of the Supreme Judicial Court is closed before 4:00 p.m. on any regular business day, a required filing shall be timely if filed on the next regular business day that the office is open for business.

Restyling Notes – June 2017

Rule 1A replaces former Rule 15 relating to time computation. Along with former Rule 16 definitions, moved to become Rule 1B, it is moved to an earlier point in the rules because its terms apply to many subsequent rules.

Rather than cross-reference to Rule 6(a) of the Maine Rules of Civil Procedure, as in replaced Rule 15, the terms related to time computation are stated directly in Rule 1A. There are adjustments to recognize the Rule's placement in the Appellate Rules structure. For example, the term "less than 7 days" in M.R. Civ. P. 6(a) is replaced with the term "6 days or fewer" in Rule 1A to reduce the potential confusion as to the counting rules that may apply to a time period of 7 days. Seven-day or one-week increments are the most common basis for time calculations in the Maine Rules of Appellate Procedure. In addition, court-ordered closures on regular business days are directly addressed in the Rule. Also, the effect of a closure of the Law Court Clerk's Office before 4:00 p.m. on a regular business day is specifically addressed.

RULE 1B. DEFINITIONS

Unless specified to the contrary by statute or these Rules, the following words, whenever used in these Rules shall have the following meanings:

(a) The term "appellant's attorney" or "appellee's attorney" or any like term shall include the party appearing without counsel, and the word "appellant" or "appellee" or any like term shall include the party appearing with counsel.

(b) The word "court" or "trial court" shall include any Unified Criminal Docket, the Business and Consumer Docket, any judge of the Probate Court, any judge of the District Court, any justice of the Superior Court, any single justice of the Supreme Judicial Court, and any administrative agency from which an appeal lies directly to the Law Court.

(c) The term "plaintiff's attorney" or "defendant's attorney" or any like term shall include the party appearing without counsel, and the word

"plaintiff" or "defendant" or any like term shall include the party appearing with counsel.

(d) The word "reporter" means a court reporter, the Office of Transcript Operations, or a transcriber of an electronically recorded record.

Restyling Notes – June 2017

Rule 1B is former Rule 16 relating to time computations. The principal changes from Rule 16 render the numbering of subdivisions consistent with the rest of the rules and add reference to a Unified Criminal Docket and the Business and Consumer Docket in addressing the definition of "trial court" and add a reference to the Office of Transcript Operations in the definition of the word "reporter."

RULE 2A. NOTICE AND FILING OF APPEAL

(a) Commencing Appeal. Review of any criminal or civil judgment, order, or ruling of the District Court, the Superior Court, any Unified Criminal Docket, 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.

(b) Notice and Appearances.

(1) Notice. The appeal shall be commenced by filing a notice of appeal with the clerk of the trial court from which the appeal is taken. The notice of appeal shall be signed by each appellant or the appellant's attorney. The notice of appeal shall specify the party taking the appeal, designate the judgment or part thereof appealed from, and notify the other parties of the need to file an appearance to be heard on the appeal. A copy of the notice of appeal shall be served on the other parties to the trial court proceeding.

(2) Appearances. (A) Criminal Appeals. In criminal appeals, the attorney or unrepresented party filing the notice of appeal shall be deemed to be representing the appellant unless new counsel appears or counsel withdraws pursuant to M.R.U. Crim. P. 44(a)(2) and 44B; and the attorney or unrepresented party representing the appellee in the trial court at the time the appeal is filed shall be deemed to be representing the appellee unless new

counsel appears or counsel withdraws pursuant to M.R.U. Crim. P. 44(a)(2) and 44B.

(B) Civil Appeals. In civil appeals, the attorney or unrepresented party filing the notice of appeal shall be deemed to be representing the appellant unless new counsel appears or counsel withdraws. An attorney representing each other party in the trial court at the time the appeal is filed shall be deemed to be representing that party in the appeal unless new counsel appears or counsel withdraws or that other party elects not to participate in the appeal. An unrepresented party, other than the appellant, in the trial court proceeding at the time the appeal is filed shall be deemed to be appearing in the appeal unless counsel appears or that unrepresented party elects not to participate in the appeal.

(c) Filing Fee.

(1) No filing fee is required for appeals in criminal cases. The required filing fee for appeals in civil cases shall be paid to the clerk of the trial court at the time of the filing of the notice of appeal.

(2) A person who believes that he or she cannot afford to pay the filing fee may file a request to have the fee waived pursuant to M.R. Civ. P. 91. If the request to have the filing fee waived is denied, the party who sought the waiver shall pay the filing fee in full within 7 days after the entry of the order denying the request for waiver of the filing fee, or the appeal shall be dismissed by the trial court.

(d) Transcript Order. The appellant shall file with the notice of appeal an order for those portions of the transcript that the appellant intends to include in the record on appeal. The transcript order shall be signed by the appellant or the appellant's attorney. A copy of the transcript order form shall be served on the other parties.

(e) Insufficient Filing. If a notice of appeal or transcript order is not signed, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the trial court clerk shall docket the receipt and return of the non-accepted documents, and then return all documents to the party who filed them. Documents that are returned to the party who filed them shall not be deemed as filed for the purpose of calculating compliance with time limits.

(f) Criminal Appeals: Particular Requirements.

(1) In a criminal case, when a court imposes any sentence on a defendant (A) after trial, or (B) after a plea to murder or a Class A, B, or C crime, with a term of one year or more that is not agreed to pursuant to M.R.U. Crim. P. 11A, the defendant shall be advised by the trial court of the right to appeal. If a criminal defendant not represented by counsel so requests, the trial court shall cause a notice of appeal to be prepared and filed on behalf of the defendant forthwith.

(2) 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), or a representation that the Attorney General has approved the appeal and a written approval will be filed within 7 days. The State shall serve a copy of the written approval on the other parties, in addition to the notice of appeal and transcript order form as required by Rules 2A(b) and (d). 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, if the defendant is represented by counsel, to the attorney for the defendant.

(g) Trial Court Clerk Actions.

(1) The trial court clerk shall mail a date-stamped copy of the notice of appeal and transcript order form to (A) the Clerk of the Law Court; (B) the court reporter or Office of Transcript Operations; and (C) 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. This notification is sufficient notwithstanding the death or incapacity of the party or of the party's attorney prior to or subsequent to the mailing of the notification.

(2) The clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing. The clerk shall then mail a copy of the docket sheet to the Clerk of the Law Court.

(3) The trial court clerk's failure to mail the notice of appeal as indicated in Rule 2A(g)(1) does not affect the validity of the appeal, but no appeal shall be deemed to be filed and commenced in the Law Court pursuant

to Rule 3(a)(2) until the Clerk of the Law Court receives the copy of the notice of appeal from the trial court clerk.

(4) In any action based on the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., whether the action involves the State or a local government, the trial court clerk shall mail a copy of any notice of appeal that is filed to the Attorney General at the same time as the trial court clerk mails that notice to the parties to the action.

Restyling Notes – June 2017

The revision of Rule 2 applies restyling practice to add significant separations and internal numbering to what were long paragraphs in the original Rule. The original rule has also been divided into three distinct Rules. Rule 2A addresses the notice and filing of the appeal. Rule 2B addresses the time for taking an appeal. Rule 2C addresses cross-appeals, multiple appeals, and bonds in civil cases.

Rule 2A is reorganized to address first the commencement of the appeal, then the notice of the appeal, then the filing fee and transcript order. The Rule also clarifies the trial court clerks' actions when filings are insufficient and, in Rule 2A(c), specifies what may happen when a waiver of the filing fees is requested but is denied, indicating that when there is a denial, the filing fee must be paid within 7 days after the denial or the appeal would be dismissed by the trial court clerk. The 7-day payment or dismissal requirement is drawn from M.R. Civ. P. 91(d) which applies in all circumstances when a fee waiver is denied.

The requirement of former Rule 2(a)(2) that notices of appeal in civil actions include a statement of the issues is removed.

Rule 2A(b)(2) adds requirements for appearances to participate in criminal or civil appeals that the unrepresented party or attorney representing each party other than the appellant in the trial court shall be deemed to be representing that party on the appeal unless new counsel appears, or counsel withdraws, or a party elects not to participate in the appeal.

Rules 2A(b), (d), and (f)(2) add the requirement that the appellant must serve on the other parties the notice of appeal, transcript order form, and, when applicable, written approval of the Attorney General or a representation that the Attorney General's approval has been obtained and will be filed within 7 days.

Rule 2A(e) clarifies that the documents returned by the trial court clerk as insufficient are not deemed as filed for purpose of calculating compliance with any time limits.

Rule 2A(f) includes, with slight modification, what were formerly paragraphs 3 and 4 in Rule 2(a).

Rule 2A(g) is a restyling of what is currently Rule 2(a), paragraph 5 with the addition of several separations and internal numbering. A requirement that the trial court clerk mail a copy of the docket sheet to the Clerk of the Law Court is added to Rule 2A(g)(2).

RULE 2B. TIME FOR APPEAL

(a) (1) Time of Entry of Judgment. A judgment or order is entered within the meaning of this Rule when it is entered into the docket. A notice of appeal filed after a verdict or an order, finding, or judgment of the court, but before entry in the docket shall be treated as filed on the date of entry into the docket.

(2) Knowledge of Judgment Presumed. A party shall be presumed to have learned of the entry of a judgment if that party, or an attorney representing that party, was present in open court when a judgment, verdict, ruling on a motion, or sentence was announced, or if that party, at the courthouse, signed a document, such as a sentencing document, a disclosure order, or other document acknowledging the entry of final judgment in the proceeding.

(b) Criminal Cases.

(1) Time to File. Except for extradition appeals addressed in Rule 2B(b)(3), the time within which an appeal may be taken in a criminal

case shall be 21 days after entry into the docket of the judgment or order appealed from, unless a shorter time is provided by law.

(2) Time to File Extended by Timely Filing of Certain Motions. If a timely motion for:

(A) arrest of judgment under M.R.U. Crim. P. 34; or

(B) judgment of acquittal after verdict under M.R.U. Crim. P. 29; or

(C) a new trial under M.R.U. Crim. P. 33; or

(D) correction or reduction of sentence under M.R.U. Crim. P. 35(a) or 35(c)

is filed within 21 days after entry of judgment, a notice of appeal from the original judgment need not be filed within 21 days after the entry into the docket of that judgment. Instead, one appeal of the original judgment and the order on the motion may be taken within 21 days after entry into the docket of the order granting, denying, or dismissing the motion. An appeal designated as being taken from such an order shall be treated as an appeal from both the order and the original judgment. In the alternative, if a notice of appeal from the original judgment is filed within 21 days after the entry into the docket of that judgment, the subsequent timely filing of one of the post-judgment motions listed in subsections (A)-(D) above does not waive or otherwise render ineffective the previously filed notice of appeal. The timely filed notice of appeal from the original judgment preserves for review any claim of error in the record, including any claim of error in an order on the post-judgment motions listed in subsections (A)-(D). This paragraph does not apply to any post-judgment motion that is not listed in subsections (A)-(D) above.

(3) Extradition Appeals. The time within which an appeal may be taken from an order making a final disposition of a petition contesting extradition shall be 7 days after entry into the docket of the order appealed from.

(c) Civil Cases.

(1) Time to File. The time within which an appeal may be taken in a civil case shall be 21 days after entry into the docket of the judgment or order appealed from, unless a shorter time is provided by law.

(2) Time to File Extended by Timely Filing of Certain Motions. If a timely motion:

(A) for judgment under M.R. Civ. P. 50(b); or

(B) to make or amend findings of fact or conclusions of law under M.R. Civ. P. 52(a) or (b); or

(C) for a new trial under M.R. Civ. P. 59; or

(D) to alter or amend the judgment, including a motion for reconsideration of the judgment under M.R. Civ. P. 59; or

(E) for reopening or reconsideration before the Public Utilities Commission pursuant to its rules of practice

is filed within the time allowed by statute or rule after entry of judgment, a notice of appeal from the original judgment need not be filed within 21 days after the entry into the docket of that judgment. Instead, one appeal of the original judgment and the order on the motion may be taken within 21 days after entry into the docket of the order granting, denying, or dismissing the motion. An appeal designated as being taken from such an order shall be treated as an appeal from both the order and the original judgment. In the alternative, if a notice of appeal from the original judgment is filed within 21 days after the entry into the docket of that judgment, the subsequent timely filing of one of the post-judgment motions listed in subsections (A)-(E) above does not waive or otherwise render ineffective the previously filed notice of appeal. The timely filed notice of appeal from the original judgment preserves for review any claim of error in the record, including any claim of error in an order on the post-judgment motions listed in subsections (A)-(E). This paragraph does not apply to any post-judgment motion that is not listed in subsections (A)-(E) above.

(d) Extension of Time. Except when prohibited by statute:

(1) Twenty-One Days. Upon a showing of good cause, the trial court may, before or after the time has expired, with or without motion and notice, extend the time for filing the notice of appeal otherwise allowed for a period not to exceed 21 days from the expiration of the original time for filing an appeal prescribed by Rule 2B(b) or 2B(c).

(2) One Hundred Forty Days. An extension of the time to file the notice of appeal exceeding 21 days, but not exceeding 140 days, from the expiration of the original time for filing an appeal prescribed by Rule 2B(b) or 2B(c) may be granted by the trial court on a motion with notice only upon a showing that (A) the trial court clerk, although required to do so, failed to send notice of the entry of judgment to the moving party; and (B) the moving party did not otherwise learn of the entry of judgment; and (C) any other party will not be unfairly prejudiced by the extension of time to file the notice of appeal.

Restyling Notes – June 2017

Rule 2B (Former Rule 2(b)) relating to calculation of the time to file an appeal has been subject to significant editing and addition of many separations and internal numbering, with some editing for clarification. Of particular note, the motions which can cause the time to file an appeal to be extended in criminal or civil appeals are each separated out for easy identification.

Rule 2B(a)(2) is added, indicating that a party who is present in court when a particular final judgment or other court action is announced by the court or who, while at the courthouse after the court's announcement, signs a document signifying acknowledgment of the court's action, is presumed to have learned of the entry the judgment at that time. This amendment is added to minimize claims of lack of knowledge of entry of judgments at later times when appeal deadlines may have been missed and parties seek to either reopen or collaterally attack a judgment.

Former Rules 2(b)(2) and 2(b)(3), restyled as Rules 2B(b) and 2B(c), are amended to clarify that there is no need to file a notice of appeal from an original judgment while certain post-judgment motions, if timely filed, are

pending in the trial court. A notice of appeal can instead be taken from the order on that post-judgment motion, within 21 days after its entry, and that single notice of appeal will be treated as an appeal from both the original judgment and the post-judgment order. In the alternative, a notice of appeal can be filed within 21 days after the entry into the docket of the original judgment, and the subsequent timely filing of certain post-judgment motions does not render ineffective the previously filed notice of appeal. The previously filed notice of appeal preserves for review any claim of error in the original judgment and in the order on the post-judgment motion.

The provision in former Rule 2(b)(3) regarding cross-appeals is moved to Rule 2C.

Former Rule 2(b)(4) is removed, and the content is instead made part of Rules 2B(b) and 2B(c).

RULE 2C. MULTIPLE APPEALS AND BONDS IN CIVIL CASES

(a) Cross-Appeals.

(1) Need to file. If the appellee seeks any change in the judgment that is on appeal, the appellee must file a cross-appeal to preserve that issue. The notice of cross-appeal shall be filed with the clerk of the trial court from which the appeal is taken, and shall be processed in the same manner as a notice of appeal filed pursuant to Rule 2A(b)(1). An appellee may, without filing a cross-appeal, argue that alternative grounds support the judgment that is on appeal.

(2) Time to File. 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 after the date on which the first notice of appeal was filed, or within the time specified by Rule 2B(b) or 2B(c), whichever period last expires.

(3) Status of Parties. When more than one party has appealed, the party who first appeals shall, unless otherwise agreed by the parties or ordered by the Law Court, be treated as the appellant in applying these Rules to such cross-appeals, and all other parties shall be treated as appellees.

(b) Joint or Consolidated Appeals. If two or more parties are entitled to appeal from a civil judgment or order, and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated after docketing in the Law Court by order of the Law Court upon its own motion or upon motion of a party.

(c) Parents' Appeals. If both parents of a child appeal from an order of the District Court or the Probate Court finding jeopardy to the child as to both parents, terminating both parents' parental rights to the child, awarding a guardianship over the child to a third person, or awarding a grandparent visitation rights, both parents shall be treated as appellants, unless otherwise agreed by the parties or ordered by the Law Court.

(d) Bond; Continuance in Effect. Any bond given at the commencement or during the pendency of a civil action, unless otherwise provided by law or by direction of the court ordering the judgment appealed from, shall continue in effect until the final disposition of any appeal of the action and until the conditions of such bond have been fulfilled.

Restyling Notes – June 2017

Rule 2C replaces Rule 2(c). Rule 2C(a) is added to address cross-appeals. A cross-appeal is commenced by filing a notice of cross-appeal with the trial court. Rule 2C(a)(1) clarifies when an appellee must file a cross-appeal to preserve an issue. If a change in the judgment is sought, a cross-appeal must be filed. *See Lyle v. Mangar*, 2011 ME 129, ¶ 22, 36 A.3d 867; *Costa v. Vogel*, 2001 ME 131, ¶ 1 n.1, 777 A.2d 827.

Historically, the Law Court has not required an appellee to file a cross-appeal to preserve an argument that the judgment should be affirmed in every respect but simply contends that the same result could have been reached on alternative grounds. *See Harris v. Woodlands Club*, 2012 ME 117, ¶ 16 n.8, 55 A.3d 449; *Scott Dugas Trucking & Excavating, Inc. v. Homeplace Bldg. & Remodeling, Inc.*, 651 A.2d 327, 329 (Me. 1994); *State v. Me. Cent. R.R.*, 517 A.2d 55, 57 (Me. 1986); *Givertz v. Me. Med. Ctr.*, 459 A.2d 548, 556 (Me. 1983); *but see MaineToday Media v. State*, 2013 ME 100, ¶ 28 n.17, 82 A.3d 104; *Langevin v. Allstate Ins. Co.*, 2013 ME 55,

¶ 6 n.4, 66 A.3d 585; *Millien v. Colby College*, 2005 ME 66, ¶ 9 n.3, 874 A.2d 397; *Littlefield v. Littlefield*, 292 A.2d 204, 208-09 (Me. 1972).

Rule 2C also has minor editing to further clarify that the Rule applies only to civil judgments.

RULE 3. DOCKETING THE APPEAL AND FURTHER TRIAL COURT ACTION

(a) Docketing the Appeal.

(1) Trial Court Docketing. Upon receipt of the signed 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.

(2) Law Court Docketing. 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.

(b) Further Trial Court Action Limited. The trial court shall take no further action pending disposition of the appeal by the Law Court except as provided in Rules 3(c) and (d) of these Rules.

(c) Trial Court Action Without Leave of the Law Court. The trial court is permitted, during the pendency of the appeal and without leave of the Law Court, to take the following action:

(1) Criminal Cases. In criminal cases, to dispose of any post-judgment motion filed within 21 days after entry of judgment pursuant to one of the rules enumerated in Rule 2B(b)(2); to appoint counsel for an indigent defendant; to grant a stay of execution and set or revoke bail pending appeal; and to conduct proceedings either for a new trial or for the correction or reduction of a sentence pursuant to M.R.U. Crim. P. 35(a) or (c);

(2) Civil Cases. In civil cases, to dispose of any post-judgment motion filed pursuant to one of the rules enumerated in Rule 2B(c)(2) of these Rules;

as provided in M.R. Civ. P. 27(b), 54(b)(3), 60(a), 62(a), 62(c), and 62(d); and as provided in Rule 5(e) of these Rules;

(3) Child Protection Cases. In child protection cases, to continue case review and processing as required by law; and

(4) Certain Interlocutory Appeals. The trial court is permitted to act on a case pending resolution of any appeal of an order approving, dissolving or denying an attachment or trustee process, a discovery order, a temporary restraining order or preliminary injunction; or an order granting or denying a motion for summary judgment or a motion to dismiss that does not resolve all pending claims.

Any party moving for trial court action permitted by this Rule may include, in its motion to the trial court, a request that the clerk of the trial court temporarily retain some or all of the trial court record as provided by Rule 6(a)(3) of these Rules, or retrieve the same from the Clerk of the Law Court, if necessary for the requested trial court action.

(d) Trial Court Action With Leave of the Law Court. A party may, during the pendency of an appeal, file a motion in the Law Court to permit a specific trial court action that is not already permitted by Rule 3(c) of these Rules. The moving party shall include, in its motion to the Law Court, the reason for the request for trial court action and shall attach to the Law Court motion the proposed trial court motion.

Restyling Notes – June 2017

Rule 3 is amended to add significant clarification and separations. This revision clarifies that the trial court retains authority to act as provided by Rule 3(c) without leave of the Law Court. Rule 3(d) is added to outline the procedure for seeking leave of the Law Court to permit trial court action not otherwise permitted by Rule 3(c).

In Rule 3(b)(4), a ruling on a motion to dismiss that does not resolve all pending claims is added to the list of trial court orders from which an appeal may be taken without causing the trial court to cease action on the matter pending resolution of the appeal. The change results in rulings on motions to dismiss being treated the same as rulings on motions for summary judgment

that are already addressed in the Rule. Adding the reference to motions to dismiss creates no approval for interlocutory appeals. It only notes that while such interlocutory appeals are pending, trial court consideration of the case can continue.

RULE 4. DISMISSAL OF THE APPEAL

(a) Voluntary Dismissal.

(1) Criminal Appeals. Prior to the time stated in subdivision (b) of this Rule, a criminal defendant may dismiss his or her appeal by filing with the Clerk of the Law Court a written dismissal, personally signed by the defendant, and the State may dismiss its appeal by filing a written dismissal signed by the attorney for the State.

(2) Civil Appeals.

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

(3) By Stipulation. Prior to the time stated in subdivision (b) of this Rule, a civil appeal may be dismissed by stipulation entered into by all of the parties and filed with the Clerk of the Law Court.

(b) On or After Date for Consideration. On or after the date scheduled for oral argument or 42 days (6 weeks) after the date for filing the appellee's brief in an appeal not scheduled for oral argument, 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 or cross-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 Court lacks jurisdiction of the subject matter, the Law Court shall dismiss the appeal.

Restyling Notes – June 2017

Rule 4 is edited to clarify in Rule 4(a)(1) that a criminal defendant must personally sign a voluntary dismissal, a direction that was implicit in the current rule. Rule 4(a)(2) is amended to create a separate brief-related deadline, Rule 4(a)(2)(B), for dismissal of a cross-appeal without agreement. Rule 4(b) is amended to clarify the date after which an appeal not scheduled for oral argument may be dismissed voluntarily only with approval of the Law Court. That date is 42 days (6 weeks) after the date for filing the appellee's brief. The current Rule referencing only the date for "submission" on briefs was ineffective because the specific date for conference of an appeal on briefs is not noticed and sometimes changes.

RULE 5. RECORD ON APPEAL

(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.

(b) Transcripts.

(1) Criminal Cases.

(A) Order of Transcript. The appellant is responsible for ordering the transcript. Except as otherwise designated, the standard transcript in a criminal appeal shall include the testimony of the witnesses at trial; any bench conferences; and, in a jury trial, the closing arguments and the court's charge to the jury. The standard transcript shall also include any hearing on a motion

to suppress or a motion in limine, if a ruling on such a motion is at issue on appeal, and the sentencing hearing, if sentencing is at issue on appeal.

Appellant's counsel may add portions to 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 7 days after 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 any transcript order not filed as part of, or contemporaneously with, the notice of appeal shall be filed with the Clerk of the Law Court and served on each other party, or if a party is represented, counsel for a represented party.

(B) Payment for Transcript. A non-indigent appellant shall make satisfactory financial arrangements with the court reporter or Office of Transcript Operations within 14 days after filing the notice of appeal, or the transcript order shall be cancelled, in which case the appeal shall proceed without a transcript.

In the case of an indigent appellant, the cost of the transcript shall be paid for by the Maine Commission on Indigent Legal Services. An indigent appellant is an appellant who has been determined indigent (i) by the trial court before verdict pursuant to M.R.U. Crim. P. 44(b), (ii) by the trial court after verdict pursuant to M.R.U. Crim. P. 44A(b), or (iii) by a Justice of the Supreme Judicial Court pursuant to M.R.U. Crim. P. 44A(c).

(2) Civil Cases.

(A) Order of Transcript. An appellant shall order the transcript or portions of the transcript deemed necessary for appeal by filing the transcript order form with the notice of 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 appellant's transcript order form, file with the Clerk of the Law Court and serve on the appellant a designation of additional parts of the transcript 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 7 days either order the parts or move in the Law Court for an order requiring the appellant to do so.

(B) Payment for Transcript.

(i) Within 14 days after 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 a reporter or the Office of Transcript Operations requests a deposit prior to beginning production of a transcript, that deposit shall be paid within 7 days after 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 reporter or the Office of Transcript Operations 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.

(ii) In the case of an indigent parent who is an appellant in a child protection case brought by the State, the cost of the transcript shall be paid for by the Maine Commission on Indigent Legal Services. An indigent parent-appellant is one who has been determined indigent (a) by the trial court before entry of the judgment or order appealed from, (b) by the trial court after entry of the judgment or order appealed from, or (c) by a Justice of the Supreme Judicial Court.

(iii) An electronic recording or statement of the evidence in lieu of a transcript may be filed to support an appeal only when the proceeding was recorded by the court or by an official court reporter, but, pursuant to Rule 91(f)(2) of the Maine Rules of Civil Procedure, the trial court (a) has

determined that the appellant is indigent and (b) has approved the use an electronic recording or statement of the evidence in lieu of a transcript.

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

(d) Unavailable Transcript.

(1) In the event a hearing or trial was not recorded or a transcript of the evidence or proceedings at a hearing or trial cannot be prepared for reasons not attributable to the appellant, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection, for use instead of a reporter's transcript.

(2) The appellant's statement shall be filed with the trial court and served on the appellee within 21 days after entry of judgment, or 14 days after the filing of the notice of appeal, whichever occurs first. The appellee may file and serve objections or propose amendments thereto within 7 days after service.

(3) After the filing of any statement of the evidence or proceedings and any objections, the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

(e) Correction or Modification of Record. If any difference arises as to whether the record on appeal truly discloses what occurred in the trial court, or if anything material to either party is omitted from the record on appeal, the trial court may on motion or suggestion, after appropriate notice to the parties, supplement the record to correct the omission or misstatement, or the Law Court may on motion or suggestion direct that a supplemental record be transmitted by the trial court clerk. All other questions as to the content and form of the record shall be presented to the Law Court.

(f) Record on Agreed Statement. When the questions presented by an appeal to the Law Court can be determined without an examination of all

the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Law Court.

The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth and is sufficiently complete, the trial court shall approve it for certification to the Law Court as the record on appeal.

Restyling Notes – June 2017

The restyling of Rule 5 reflects significant editing and internal numbering particularly with regard to reference of the transcript in civil cases. Of particular note, a reference to transcripts for appeals by indigent parents in Title 22 child protection cases is added to track the provision relating to transcripts in criminal cases for indigent defendants.

Because Rule 1B includes the definition of a reporter as including the Office of Transcript operations, the similar definition is removed from Rule 5(a).

In Rule 5(b)(1)(A), the standard transcript in criminal cases is expanded to include closing arguments in jury trials and hearings on motions to suppress or motions in limine if rulings on such motions are to be at issue in appeal and sentencing hearings if sentencing is an issue on appeal.

As with the amendment to Rule 2, the requirement that the notice of appeal include an issues statement is removed from Rule 5.

In discussion of the civil transcripts in Rule 5(b)(2)(B)(iii), reference is made directly to M.R. Civ. P. 91(f)(2), addressing the circumstances in which, for indigent parties, a recording or statement in lieu of a transcript may be submitted in lieu of a transcript for parties whose requests are approved by the trial court pursuant to M.R. Civ. P. 91(f).

Rule 5(c) is expanded to address transcript formatting and copying of transcripts. The Rule is clarified to allow transcript formatting choices as permitted by the Office of Transcript Operations.

RULE 6. FILING THE RECORD WITH THE LAW COURT

(a) Filing the Record.

(1) Twenty-Eight-Day Retention Period. After receipt of a notice of appeal and, when required, the requisite fee or waiver of payment of fees, the trial court clerk shall retain the record for 28 days. The trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the expiration of the 28-day retention period. The 28-day retention period does not apply to extradition appeals. The trial court clerk shall file the trial court record in an extradition appeal with the Clerk of the Law Court within 7 days following the filing of the notice of appeal.

(2) Effect of Certain Post-Judgment motions. If, during the 28-day retention period, a timely post-judgment motion listed in Rule 2B(b)(2) or 2B(c)(2) is filed, the trial court clerk shall retain the file until the trial court has acted on the motion. The trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the entry of the order on that post-judgment motion.

(3) Additional Temporary Retention of the Record by Order of the Trial Court. Notwithstanding the provisions of subsections (1) and (2) of this Rule, if the record or any part thereof is required in the trial court for use pending the appeal, the trial court may order, or the parties may stipulate, that the clerk of the trial court shall retain the record or parts thereof, subject to the request of the Law Court. Upon entry of such an order or stipulation, the trial court clerk shall transmit to the Clerk of the Law Court a copy of the order or stipulation. Upon filing in the Law Court of the brief of the appellee, or at such earlier time as the parties may agree or the Law Court may order, the appellant shall request the clerk of the trial court to transmit the record to the Clerk of the Law Court.

(4) Record for Preliminary Hearing in the Law Court. If prior to the time the record is transmitted, a party desires to file and have considered a motion in the Law Court for dismissal, for a stay pending appeal, or for any

intermediate order, the clerk of the trial court, at the request of any party, shall transmit to the Law Court such parts of the original record as any party shall designate.

(b) Contents of the Record.

The trial court clerk's record shall include a copy of the complete docket entries and originals of the following: any opinion, order, or judgment by the trial court; the pleadings; motions and actions thereon; documentary exhibits; a list of retained exhibits; correspondence between the parties and the trial court; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; and the notice of appeal with the date of filing.

When more than one appeal is taken following a single trial or hearing, a consolidated trial court clerk's record shall be prepared.

"Documentary exhibits" include papers, maps, photographs, videos, digital images, diagrams, CDs, DVDs, flash drives, and other similar materials. If a documentary exhibit can be easily and inexpensively reproduced, a copy thereof shall be retained by the clerk of the trial court.

Exhibits that consist of tangible objects, such as weapons, articles of clothing, liquids, computers, hard drives, or other electronic devices shall be retained by the clerk of the trial court, except upon order of the Law Court. If a documentary exhibit, other than a trial court transcript or a record of an administrative proceeding originally appealed to the trial court, is of unusual bulk or weight, it shall be retained by the clerk of the trial court, except upon order of the Law Court.

An indigent criminal defendant or indigent parent in a child protection matter filed by the Department of Health and Human Services may have one copy of the trial court clerk's record without charge.

(c) (1) Filing of Reporter's Transcript. Unless the Law Court otherwise directs, within 56 days after the filing of the notice of appeal, 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 a CD, DVD, or flash drive containing an electronic copy of the transcript in native .pdf format, unless, by prior arrangement with the Clerk of the Law Court, the reporter is authorized to email an electronic copy of the transcript to the Clerk of the Law Court.

(2) Delayed Filing of Transcript. If the reporter anticipates that the 56-day time limit will not be met, the reporter shall file an application with the Clerk of the Law Court requesting additional time at least five days before the expiration of the 56-day time limit. The Clerk of the Law Court is authorized 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.

(d) Electronic Records.

(1) If an appeal from an administrative agency decision is filed directly with the Law Court, and the administrative record is prepared only in electronic or digital format, without a printed or paper copy of the record, the record filed with the Law Court shall include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself shall include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

(2) An electronic or digital record shall be submitted by use of a CD, DVD, flash drive, or hard drive, with the record submitted in two identical electronic or digital copies by whatever means submitted. The copies of the record shall be in a format that allows them to be read as .pdf documents or is otherwise compatible with Maine Judicial Branch computer systems for reading documents.

Restyling Notes – June 2017

Rule 6(a)(1) is revised to introduce a 28-day period in which the trial court clerk will retain the trial court record for most appeals. Once the 28-day period expires, the trial court clerk must file the record with the Clerk of the Law Court within 7 days. The purpose of the change, concurrent with amendment to Rule 3(b)-(d) and Rule 6(a)(2), is to hold the record in the trial

court to allow for the filing and trial court resolution of timely post-judgment motions listed in Rules 2B(b)(2) and 2B(c)(2).

As part of the change in the time for filing the record in the Law Court, the Rule is also amended to clarify that the record in extradition appeals must be filed within 7 days after filing of the notice of appeal. The amendment to restyled Rule 6(a)(3) also clarifies that the trial court record may be temporarily retained for an additional period of time, by order of the trial court or stipulation of the parties, when such a retention is necessary, for example, to accomplish trial court action permitted by Rule 3(c) of these Rules.

Because Rule 6(b) specifies the contents of the trial court clerk's record, the provision in the current rule allowing parties to designate additional items for the record is eliminated. The provision had created confusion and efforts to add items to the record. Corrections to the record are addressed in Rule 5(e).

Rule 6(b)-(d) is subject to significant editing to recognize modern developments relating to preparing records, particularly the treatment of videos and digital evidence and the means by which such videos and digital evidence may be prepared and transmitted to the Court. Further, the portion of the Rule regarding what may be retained in the trial court is expanded to include other items that, absent court order or apparent need, should be retained with the trial court file rather than transmitted as part of the appeal to the Law Court. The amendment also adds indigent parents in appeals of child protection cases filed by the Department of Health and Human Services as entitled to receive without charge a copy of the record on appeal. Presently that entitlement is limited to indigent criminal defendants.

In Rule 6(c)(1), the deadline for filing the reporter's transcript is changed to 56 days after the filing of the notice of appeal, rather than the later receipt of the notice of appeal mailed from the trial court clerk. The reference to "native" .pdf format means a .pdf format that allows limited cutting and pasting from the .pdf document to a Word document.

Rule 6(d) is added, addressing appeals filed directly with the Law Court from proceedings in which a record may be prepared only in electronic or digital format, without a printed or paper copy of the record. In such appeals,

the record filed with the Law Court must include a printed or paper index to each separate document or item in the record, and the electronic or digital record itself shall include a search feature permitting searches for documents or items in the record by index number or title and by key words within the document.

Rule 6(d)(2) indicates the procedure for preparing and submitting digital records to the Law Court, which includes submitting the record by use of a CD, DVD, flash drive, or hard drive, with the record submitted in two identical electronic copies by whatever means submitted. Further, the copies must be in a format that allows them to be read as .pdf documents or is otherwise compatible with Maine Judicial Branch computer systems for reading documents.

As this draft is being prepared, the only agency known to prepare and file such electronic or digital records in Law Court appeals is the Maine Public Utilities Commission. However, the Rule anticipates that this record filing practice may expand to other agencies in the future, and may apply to court records after implementation of electronic filing. At that time, with experience gained by implementation of this change, further adjustment of the electronic record filing requirement may be necessary.

RULE 7. SCHEDULE FOR BRIEFING AND CONSIDERATION

(a) Briefing Schedule. Upon determining that the record on appeal is complete, the Clerk of the Law Court shall promptly send to each counsel of record and each party that is not represented by counsel a written notice stating: (1) the dates on which the appellant's brief, the appellee's brief, and the appendix are due to be filed; and (2) the date on which appellant's reply brief, if any, is due to be filed. The due dates stated in the notice for briefing, filing the appendix, and consideration are not affected by any later transcript order, procedural motion, or court order unless the Law Court orders otherwise.

(b) Time for Filing Briefs.

(1) Track A Appeals. In a Track A appeal, the appellant shall file the appellant's brief within 28 days (4 weeks) after the date that the record on appeal is complete. The appellee shall file the appellee's brief within 56 days

(8 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within 14 days after the date that the appellee's brief is filed.

An appeal is a Track A appeal if it results from a trial court judgment that:

(A) determines jeopardy pursuant to 22 M.R.S. § 4035;

(B) terminates parental rights pursuant to 22 M.R.S. § 4055 or 18-A M.R.S. § 9-204;

(C) grants a decree of adoption pursuant to 18-A M.R.S. § 9-308;

(D) appoints a guardian for a minor pursuant to 18-A M.R.S. § 5-207;

(E) denies the termination of a guardianship for a minor pursuant to 18-A M.R.S. § 5-210;

(F) grants, or denies the termination of, a guardianship for an adult pursuant to Title 18-A, Article 5, part 3;

(G) establishes or changes contact between a parent and child pursuant to 19-A M.R.S. § 1653(2) or (10);

(H) grants or denies a determination of de facto parenthood or parentage in any parentage proceeding defined in 19-A M.R.S. § 1834;

(I) grants contact pursuant to the Grandparents Visitation Act 19-A M.R.S. § 1801 et seq.;

(J) involuntarily commits an individual to an institution or a progressive treatment program, or orders the involuntary medication of a person;

(K) determines that a criminal defendant is not criminally responsible by reason of insanity; or

(L) resolves an appeal from an agency's denial of a request pursuant to the Freedom of Access Act, 1 M.R.S. § 400 et seq.

(2) Track B Appeals. In an appeal from a trial court judgment that does not fall within Track A, 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 21 days (3 weeks) after the date that the appellee's brief is filed.

(3) Extensions of Time. No extensions of time for filing a brief shall be granted except (A) pursuant to Rule 12A(b)(1)(A), (B) when preparation of the brief requires review of transcripts from more than five days of trial testimony and/or more than 2,000 pages of documentary exhibits first presented to the court from which the appeal is taken, or (C) upon a showing of a significant and unanticipated emergency that prevents a timely filing of a brief.

(4) Expediting Appeals. If a party to an appeal wishes to expedite the appeal, that party may file a motion for expedited consideration of the appeal, following the requirements for motion practice contained in Rule 10. The motion shall (A) state the reasons why an expedited appeal is requested; (B) propose a schedule for due dates for filing the briefs and the appendix that allows the non-moving party or parties no less time than the moving party to meet the proposed briefing and appendix filing due dates; and (C) represent that the moving party has contacted the non-moving party or parties, and indicate whether the non-moving party or parties support or oppose the motion for expedited consideration of the appeal.

(c) [Reserved]

(d) Consequence of Failure to File Briefs. If an appellant fails to comply with this Rule, the Law Court may dismiss the appeal for want of prosecution. If an appellee fails to comply with this Rule, and if oral argument is scheduled, the appellee will not be heard at oral argument except by permission of the Law Court.

(e) Scheduling of Consideration. All appeals shall, unless the Law Court otherwise directs, be in order for oral argument or other consideration

21 days after the date on which the appellee's brief is due to be filed or is filed, whichever is earlier.

Restyling Notes – June 2017

The adjustments to Rule 7 follow the editing and internal numbering practices of the rules restyling effort.

The Rule 7 amendments also include a number of substantive changes:

In Rule 7(b)(1), the Track A briefing schedule is expanded to include appeals from any parentage proceeding defined in the Maine Parentage Act at 19-A M.R.S. § 1834. The change extends the Track A coverage to paternity determinations and may also cover a few parental rights determinations not addressed in other parts of the Rule. With this expanded coverage, there is some duplication between subdivision H and other subdivisions in Track A to assure that most matters directly impacting the interests of minor children are covered in Track A.

In Rule 7(b)(1)(F), the Track A briefing schedule is also expanded to include the denial of a termination of an adult guardianship.

Each category in Track A, set forth in Rule 7(b)(1), is given a letter designation, and the time for filing reply briefs is extended from 10 to 14 days to follow the timing practice of using 7 day increments.

In Rule 7(b)(2), for Track B appeals, the briefing schedule is not changed except that the time for filing a reply brief for Track B appeals is extended from 2 weeks to 3 weeks after filing of the appellee's brief.

In Rule 7(b)(3)(B), a new category for appeals with extra large trial court records is added to the grounds that may support the granting of an extension of time to file briefs. The extra large record must have been created in the court from which the appeal is taken, not in a previous proceeding that was reviewed by the court from which the appeal is taken. Previous proceedings with large records that would not justify an extension of time to file a brief would include criminal trial records that were reviewed in a post-conviction review proceeding or administrative appeal records that were reviewed in a Rule 80B or 80C proceeding.

The capacity to file a motion to expedite appeals, Rule 7(b)(4), previously limited to Track B appeals, now extends to all appeals. Allowing any party to an appeal to file a motion to expedite the appeal. In addition, the draft rule adds specific standards for filing and consideration of a motion to expedite an appeal.

Rule 7(c) addressing printed and electronic copies of briefs is moved to become restyled Rule 7A(i), placing it more appropriately in the Rule addressing the form of briefs.

RULE 7A. BRIEFS: FORM AND CONTENT

(a) Brief of the Appellant. (1) The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases, statutes and other authorities cited.

(B) A statement of the facts of the case, including its procedural history.

(C) A statement of the issues presented for review.

(D) A summary of the argument, if the argument is not adequately summarized in the statement of the issues presented for review.

(E) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting each contention, with citations to the authorities and the particular documents or exhibits in the record relied on, with citation to page numbers of the appendix when they exist. The argument for each issue presented shall begin with a statement of the standard(s) of appellate review applicable to that issue.

(2) A brief shall not include:

(A) any documents or images that are not a part of the trial court file or the record on appeal;

(B) any documents that are, or include, pictures, videos, or other images (i) of persons under 18 years of age, (ii) of adults subject to a guardianship or mental health commitment proceeding, or (iii) that depict nudity or sexual or sexualized acts;

(C) except for a brief prepared by the State in a child protective case, any documents made confidential by statute or court order.

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision (a) of this Rule, except that a statement of the issues and standards of appellate review or of the facts or procedural history of the case need not be included unless the appellee is dissatisfied with the statements of the appellant.

(c) Reply Brief. Any reply brief filed by the appellant must be strictly confined to replying to new facts asserted or arguments raised in the brief of the appellee. No further briefs may be filed except by leave of the Law Court.

(d) Briefs on Cross-Appeals. If a cross-appeal is filed, the brief of the second party to the appeal shall contain the issues and argument involved in the cross-appeal as well as the answer to the brief of the appellant.

(e) Brief of an Amicus Curiae.

(1) General.

(A) Except as provided in paragraph (2) of this subdivision, or when amicus briefs are invited by a notice from the Law Court, a brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of the Law Court. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(B) An amicus curiae brief shall be filed by the date on which the appellee's brief is due to be filed, unless the Law Court, for good cause shown, grants leave for later filing. Any party may file a reply brief addressing new matter raised by an amicus curiae within 14 days after service of the brief of

an amicus curiae or within such other time as the Law Court may specify in granting leave for later filing to the amicus curiae.

(C) The motion of an amicus curiae for leave to participate in the oral argument shall be granted only for extraordinary reasons.

(2) Maine Tort Claims Act.

(A) In any action under the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., the Attorney General shall have the right to appear before the Law Court by brief and oral argument as an amicus curiae when the Attorney General is not otherwise appearing on behalf of a party to the action.

(B) Unless all parties otherwise consent, in any such action when the Attorney General has received notice of appeal as provided in Rule 2A(g)(4), the Attorney General shall file an amicus brief within the time allowed the party whose position as to affirmance or reversal the brief will support, unless the Law Court for cause shown shall grant leave for later filing. In that event, the Law Court shall specify within what period an opposing party may reply to the Attorney General's brief.

(f) (1) Length of Briefs. The principal brief of any party and any amicus brief shall not exceed the greater of 40 pages or 10,000 words, and any reply brief allowed by these Rules shall not exceed 15 pages or 4,500 words, without prior approval of the Law Court, which shall be granted only upon a showing of good cause. An appellee's brief that also addresses that appellee's cross-appeal shall not exceed the greater of 50 pages or 13,000 words. An appellant's reply brief that also responds to an appellee's cross-appeal shall not exceed the greater of 30 pages or 9,000 words.

(2) Attachment. The principal brief of an appellant or an appellee may include, as an attachment not exceeding 3 pages, copies of documents, photographs, or diagrams that are part of the trial court record and are not prohibited from inclusion in the brief by Rule 7A(a)(2). Any document, photograph, or diagram included as an attachment may be marked to add emphasis.

(3) Page or Word Limit Calculations. The table of contents, the table of authorities, the certificate of service, and any appendix bound with

the appellant's brief are not counted in calculating the page or word limits set in this Rule.

(g) Form of Briefs.

(1) (A) Signature. At least one paper copy of each party's brief filed with the Law Court shall be signed by an attorney who prepared the brief, or, if the party or parties filing the brief was unrepresented by counsel, by each party filing the brief. The attorney's or party's signature on the brief shall constitute a representation that the brief, together with any associated documents, is filed in good faith and conforms to the page or word limits and the form and formatting requirements of this Rule. A separate certificate indicating that the filing conforms to the word limits set in this Rule shall be filed only if the length of the document exceeds the applicable page limits.

(B) Electronic Signature. As an alternative to the signature on a print copy of a brief, an attorney in active practice, registered with the Board of Overseers of the Bar, may file with the electronic copy of the brief a certificate of signature indicating that the attorney (i) has prepared or participated in preparing the brief and (ii) makes the representations and certifications as required by Rule 7A(g)(1)(A). The certificate of signature, on a form prepared by the Clerk of the Law Court, shall identify the party on whose behalf the brief is filed, and shall include the attorney's name, Maine Bar Registration Number, email address, street address, and business telephone number.

(2) Form and Formatting. Briefs may be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper, with printing on only one side of each page. All printed matter must appear in at least 14-point font on opaque, unglazed paper, except that footnotes and quotations may appear in 11-point font. Pages shall be 8-1/2 x 11 inches with margins of 1 inch on the top, bottom, and each side of the page, and with double spacing between each line of text except for block quotations.

(3) Binding. Briefs shall be bound on the left-hand margin with comb or spiral binding that permits the pages to lie flat when the document is open.

(4) Front Cover. The front cover of the brief shall contain: (A) the name of the Supreme Judicial Court sitting as the Law Court and the Law Court docket number of the case; (B) the title of the case; (C) the nature of the proceeding before the Law Court (e.g., Appeal; Report; Certified Question) and the name of the court, agency, or other entity from which the appeal is taken or the question is presented; (D) the title of the document (e.g., Brief for Appellant); and (E) the names and addresses of counsel representing the party on whose behalf the document is filed or the name and address of the party filing the brief, if not represented by counsel.

(5) The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray.

(h) Briefs in an Appeal Involving Multiple Appellants or Appellees. In an appeal involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference another's brief or any part thereof. Parties may also join in reply briefs. Adoption of a brief or portion thereof may be by letter to the Clerk of the Law Court, with a copy to all other parties, if the adopting party does not otherwise file a brief. A party adopting another's brief or part thereof shall do so on or before the due date for that party's own brief.

(i) 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 2 printed copies of each brief shall be served on each of the other parties who are either separately represented or unrepresented. The Clerk of the Law Court shall not accept a brief for filing unless it is accompanied by acknowledgement or certificate of service upon the other parties.

(2) Electronic copies. One electronic copy of each brief filed shall be emailed (1) to the Clerk of the Law Court at the email address provided by the Clerk in the written notice issued pursuant to Rule 7(a), and (2) to each other party that has provided a proper email address with his or her appearance on the appeal. The electronic copy shall be in the form of a single native .pdf file

and may appear as unsigned. 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 Rule 7A(i)(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.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed and before either (A) oral argument, or (B) 42 days (6 weeks) after the date set for filing the appellee's brief for an appeal not set for oral argument, the party may promptly advise the Clerk of the Law Court by letter, with a copy mailed and emailed to all other parties, setting forth the citation(s). The letter must state the reasons for the supplemental citation(s), referring to the page of the brief addressed by the new citation(s). The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited. A similar filing may occur after oral argument only if invited by the Court at the oral argument.

Restyling Notes – June 2017

Rule 7A is a restyling of Rule 9 in the current Maine Rules of Appellate Procedure. This adjustment allows the rules relating to the form and filing of the briefs to appear together in the Appellate Rules. The heading of the rule is amended to clarify that it applies to form and content of briefs, while Rule 7 relates to scheduling and consideration of briefs.

Rule 7A(a)(2) is new and lists specific items that may not be included in a brief or an attachment to a brief. The listing is similar to the list of items that may not be included in an appendix. *See* Rule 8(g)(1)-(3). The listing is designed to protect the privacy interests of minors and persons with mental health issues, and to avoid the potential that publicly available briefs or appendices could cause unnecessary embarrassment to parties, victims, witnesses, or other participants in cases that might make such individuals reluctant to seek the access to justice that the courts provide.

Rule 7A(e), addressing amicus briefs, is amended to clarify that when the Law Court invites amicus briefs on a particular appeal, the filing of an

amicus brief does not require approval of the parties to the appeal, or the filing of a motion.

In the editing of what is now Rule 7A, the repetitive page limit statements that appeared with each type of brief addressed in the rules are eliminated and replaced with a single page limit statement that now appears at Rule 7A(f)(1). The Rule is also amended to allow, in Rule 7A(f)(2), an attachment to a brief, not exceeding 3 pages, to include copies of documents, photographs, or diagrams that are part of the trial court record. Those items may be marked to add emphasis, even if the emphasis markings do not appear on the original items in the trial court record.

In a substantive change, the permitted length of briefs, provided in Rule 7A(f)(1), is reduced from 50 pages to 40 pages for principal briefs and from 20 pages to 15 pages for reply briefs. New categories added for (1) an appellee's brief that also addresses that appellee's cross-appeal, with a 50-page limit, and (2) an appellant's reply brief that also replies to an appellee's cross-appeal, with a 30-page limit. The First Circuit Rules, Fed. R. App. P. 37(a)(7)(A), have limits of 30 pages for principal briefs and 15 pages for reply briefs. The First Circuit generally applies the same page size, spacing and 14-point font requirements as are stated in Rule 7A.

The revised Rule also includes, as an alternative to page limits, word limits of 10,000 for principal briefs, 4,500 for reply briefs, 13,000 for appellee's briefs that also argue that appellee's cross-appeal, and 9,000 for appellant's reply briefs that also respond to an appellee's cross-appeal. Longer briefs may be filed with prior approval of the Law Court after filing of a motion demonstrating good cause for having to file a longer brief.

The First Circuit has allowed filing of briefs measured by word limits for several years, with recent changes effective December 1, 2016. *See* Fed. R. App. P. 28.1(e)(2) and 32(a)(7)(B).

Current Rule 7(c) addressing printed and electronic copies of briefs is moved to become Rule 7A(i). Filing of an electronic copy of a party's brief, which is discretionary in current Rule 7(c)(2), is required in the restyled rules. The reference to "native" .pdf is to indicate the .pdf format that allows cut-and-pasting from a .pdf to a Word document. The .pdf documents do not need to indicate an actual signature, which can only be reproduced using the

.pdf picture format. As currently, the filing of an electronic copy of a brief does not alter the obligations to file printed copies of the brief.

A provision is added to Rule 7A(g)(1)(A) indicating that an attorney's or party's signature on the brief constitutes a representation that the filing is in good faith and is in compliance with the rules governing briefing, including page and/or word limits and font size. A specific certificate of compliance with the word limits is required only if a brief exceeds the specified page limits. Rule 7A(g)(1)(B) is added allowing, subject to the conditions specified in the Rule, electronic filing of a certificate of signature in place of an actual signature on a copy of a printed brief.

Rule 7A(j) is added, tracking closely Rule 28(j) of the Federal Rules of Appellate Procedure. The only difference with the federal rule is that the federal rule (1) allows such filings at any time "after oral argument but before decision" and (2) does not address appeals considered without oral argument. Rule 7A(j) now limits such filings to the time "before" oral argument or before 42 days have passed following the date set for filing the appellee's brief if a case will be considered on the briefs. Filings after oral argument may occur only if invited by the Court.

RULE 8. APPENDIX TO THE BRIEFS

(a) By Whom Filed. In every appeal, the party that files the first notice of appeal shall prepare and file an appendix to the briefs, except that in child protection matters, 22 M.R.S. §§ 4001-4071, the State shall be responsible for preparing and filing the appendix.

(b) Number of Copies, When Filed.

(1) Eight copies of the appendix shall be filed with the appellant's brief. In Title 22 child protective cases, the State shall file the appendix with the Court no later than 14 days before the date on which the appellant's brief is due to be filed. The parties may agree to a later time for the filing of the appendix without notice to or leave of the Law Court, provided that the appendix shall be filed no later than the date that the appellee's brief is filed or is due to be filed, whichever occurs first.

(2) When the appendix is filed with the Court, a copy shall be served on each other party to the appeal.

(c) Contents, Generally. The purpose of the appendix is to make available to each Justice of the Court those documents from the record that are essential to the review of the issues on appeal. Duplication must be avoided. No document shall appear in the appendix more than once.

(d) Contents, Mandatory - ALL APPEALS. The following documents shall be contained in the appendix in the following order:

(1) A table of contents.

(2) All docket entries from the proceeding(s) below.

(3) Each trial court decision, ruling, or judgment that will be addressed in the appeal, including the original final judgment and any subsequent orders amending the original final judgment.

(A) If the decision is in written form, a copy of the decision shall be included;

(B) If the decision or judgment includes more than one order or set of findings, a copy of each court action that constitutes the decision or judgment shall be included;

(C) If any part of the decision was stated orally on the record, a copy of the transcript of the decision shall be included. When a decision or ruling stated orally on the record was preceded by a colloquy with the court, the colloquy shall be included in the appendix if the colloquy does not exceed 20 pages in the appendix.

(4) The complaint, indictment, information, petition, motion, or post-judgment motion that initiated the proceeding in the trial court and any subsequent amendment to the document that initiated the proceeding.

(5) Any pre-judgment or post-judgment motion or petition that was subject to an order or other action or inaction by the trial court that is at issue in the appeal. If the motion or other request to the trial court was made

orally, a transcript of the on-the-record discussion of the motion or other request to the trial court, including the court's ruling, shall be included.

(e) Contents, Mandatory - SPECIFIC PROCEEDINGS. Following the contents required by subdivision (d), the appendix shall contain the following contents for specific proceedings:

(1) Summary Judgment. If the appeal relates to the entry or denial of a summary judgment, a copy of the parties' statements filed pursuant to M.R. Civ. P. 56(h).

(2) State and Local Government Administrative Appeals.

(A) If the appeal addresses a decision of a State or local administrative agency, including a municipality, board, commission, or other administrative body, a copy of the agency's decision, whether written or transcribed.

(B) If the agency decision was based on a municipal ordinance, a State or local regulation, or a Private and Special Law, a copy of the relevant section or sections from that ordinance, regulation, or Private and Special law, shall be included. For appeals from decisions of a municipal agency, a copy of the section or sections of the municipal ordinance that establish the authority of the agency to act on the matter subject to the appeal shall be included. Copies of relevant sections of the Maine Revised Statutes shall not be included.

(3) Jury Instructions. If the appeal includes a challenge to a jury instruction or jury instructions, a copy of the transcript of the jury instructions and a copy of any written instructions given to the jury, a copy of the transcript containing the discussion of or objection to the instructions, and copies of any relevant oral or written requests to the trial judge for different instructions than those given to the jury by the trial judge.

(4) Jury Verdict, Special Verdict Form. If the appeal is from a judgment entered on the verdict of a jury, and the jury reported its verdict on a written form, a copy of that form and a transcript or copy of the objections to that form, if any.

(5) Contract, Deed, Lease, Trust, Will, or Insurance Policy. If the appeal relates to the interpretation or enforcement of a contract, deed, lease, trust, will, or insurance policy: a copy of that document.

(6) Domestic Relations, Parentage, or Child Protection Matters. If the appeal is from a decision related to a domestic relations, parentage, or child protection matter: the child support affidavits, if child support is at issue on appeal; a transcript or recording of the testimony concerning the issues on appeal; the financial statements of the parties, if property distribution or child or spousal support is at issue on appeal; the report of the guardian ad litem, if any, if a parental rights or parentage decision is at issue on appeal.

(7) Criminal Appeals. If the appeal is from a decision in a criminal matter: the presentence report, if any, if a sentence is at issue on appeal; the search warrant or arrest warrant and any affidavit in support of issuance of the warrant, if a search warrant or arrest warrant or actions pursuant to a search warrant or arrest warrant are at issue on appeal; and the Attorney General's authorization, if required, for any State appeal brought pursuant to Rule 21.

(f) Contents, Discretionary. The following materials from the trial court record may be included in an appendix but are not required:

(1) Exhibits. If particular exhibits are essential to the Court's understanding of the issues on appeal, the appendix may include copies of those exhibits. Copies of exhibits, including photographs, maps, charts, or diagrams that were presented in color to the trial court or administrative agency shall be reproduced in color by any means, such as scanning or color printing, that reproduces the exhibit in the appendix to appear as close as possible to the way the exhibit appeared in the trial court record.

(2) Other Pleadings. Copies of other pleadings or filings that appear in the trial court record may be included, but only if they are essential to the Court's understanding of the issues on appeal.

(3) Placement. Documents from the trial court record, other than those that are designated "mandatory," that are essential for understanding the specific issues on appeal shall be placed in the appendix following the documents required by Rule 8(d) or (e).

(g) Exclusions from the Appendix. The appendix shall not include:

(1) any documents or images that are not a part of the trial court file or the record on appeal, other than a supplement of legal authorities authorized in subdivision (n) hereof;

(2) any documents that are, or include, pictures, videos, or other images (A) of persons under 18 years of age, (B) of adults subject to a guardianship or mental health commitment proceeding, or (C) that depict nudity or sexual or sexualized acts;

(3) except for an appendix prepared by the State in a child protective case, any documents made confidential by statute or court order that are not required to be included in the appendix by subdivisions (d) or (e) hereof; or

(4) any portion of the transcript from the trial court other than on the record statements or discussions required to be included in the appendix by subdivisions (d) or (e) hereof.

(h) Failure to Comply with Rules. An appendix that (1) fails to include mandatory documents; (2) does not present documents in the required order: first documents required by subdivision (d), then documents required by subdivision (e), then documents, if any, included pursuant to subdivision (f); (3) includes duplicate copies of documents; (4) includes documents or images excluded by subdivision (g); or (5) otherwise is not prepared in compliance with these Rules may be rejected, with the party that prepared the appendix being required to prepare and file a replacement appendix that complies with these Rules or being subject to another appropriate sanction, including dismissal of the appeal.

(i) Contents, Agreement of the Parties. The parties shall confer and attempt to reach agreement on the contents of the appendix in compliance with this Rule. If the parties do not agree:

(1) No later than 14 days before the appellant's brief is due to be filed, the appellant shall deliver to the appellee a list of the documents that the appellant proposes to include in the appendix. In child protection cases in which the State is the appellee, the appellant shall deliver to the appellee the

list of the documents that the appellant proposes to include in the appendix at least 14 days before the appendix is due to be filed.

(2) If the appellee wishes to have additional documents included in the appendix, the appellee must, within 7 days after notice of the appellant's list of documents, designate additional documents for inclusion in the appendix, and the appellant shall include those documents in the appendix, unless otherwise ordered by the court.

(j) Content, Costs. Unless otherwise agreed by the parties, the appellant shall be responsible for the costs of producing the appendix. If the appellee designates documents for inclusion and the appellant concludes that such documents are not essential to understanding of the issues on appeal, the appellant shall include such documents in the appendix, but may seek recovery of the costs for inclusion of such documents after decision on the appeal. Following an appeal in a civil case, any of the costs incurred in the production of the appendix may be taxed to either party by the Law Court pursuant to Rule 13.

(k) Content, Format.

(1) Each page of the appendix shall be numbered consecutively. If the appendix consists of 20 pages or fewer, 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.

(2) 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 the paper. Except for oversize or electronic exhibits, the paper shall be 8-1/2 x 11 inches.

(3) The appendix shall be spiral bound or bound by a similar process, such as comb binding that permits the pages to lie flat when the document is opened. Plastic or metal spikes, staples, or posts shall not be used in binding.

(4) Oversize exhibits—such as plans or maps—and electronic exhibits on disc or another medium may be attached to the appendix in any method that permits the appendix to be handled as a bound volume.

(5) No volume of an appendix shall exceed 150 sheets of paper printed on both sides, not including oversize and electronic exhibits, and no appendix shall exceed one volume without prior approval of the Court.

(l) Failure to File an Appendix. The failure to file an appendix, or the failure to include in the appendix any document required to be included as set out in this Rule, may result in the dismissal of the appeal or other sanction.

(m) Hearing on the Original Record Without the Necessity of an Appendix. The Law Court may, on good cause shown in a motion filed prior to the filing deadline for appellant's brief, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the Law Court may require.

(n) Supplement of Legal Authorities. A supplement of legal authorities is not required. The parties may, at their discretion, provide the Court with a brief supplement, separate from the appendix, containing important, relevant legal authorities such as statutes or court decisions from other jurisdictions. It is not necessary to provide copies of any or all cited authorities. The supplement of legal authorities is not counted in computing the appendix page limit.

Restyling Notes – June 2017

Despite its relatively explicit language, compliance with the requirements in Rule 8, by the bar and by unrepresented litigants, has been less than ideal. Repeated problems have been observed in (1) failure to include in the appendix documents that are required to be included by current Rule subdivisions 8(g) and 8(h); (2) failure to place documents included in the appendix in the order specified by current Rule subdivisions 8(c)(5) and 8(g); and (3) inclusion of duplicates of documents in the appendix, despite the explicit prohibition in current Rule 8(c)(4) that "[no] document shall appear in the appendix more than once."

To address these problems, Rule 8 is reorganized to place these explicit directions earlier and more prominently in the Rule. What were formerly Rule 8(g) and 8(h) are now Rule 8(d) and 8(e). In addition, practitioners may anticipate that the explicit directions in Rule 8 will be more rigorously

enforced than in the past, with failure to comply with the Rule more likely to lead to a rejection of the appendix and a requirement that a new appendix be prepared or another sanction, including dismissal of the appeal, being imposed.

In addition to this reorganization and to minor editing to accomplish the objectives of restyling, Rule 8(g) is adopted to explicitly list items that may not be included in the appendix. The listed exclusions include any images of persons under 18 years of age, images of adults subject to guardianship or mental health commitment proceedings, and images that depict nudity or sexual or sexualized acts, and, except for child protective cases, any documents deemed confidential by statute or court order, except documents that are subject to the mandatory inclusion requirements of Rule 8(d) and 8(e). Because Rule 8(d) and 8(e) speak primarily to pleadings, docket entries, court orders, and the like, it would be rare for a document made confidential by statute or court order to be subject to mandatory inclusion in an appendix.

The exclusions also extend to transcripts or portions of transcripts, other than portions of transcripts included as mandatory items by Rule 8(d) and 8(e). The mandatory items have been expanded to include dialogue between the trial court and the parties that precedes a court ruling, order, or decision that is at issue on appeal. Any relevant portion of a transcript may, of course, be citied and, if particularly important, quoted in a party's brief. With filing of electronic copies of transcripts, transcripts are available for review by any Justice. All items excluded from the appendix, including print copies of transcripts, do remain part of the record and are available for Law Court review on appeal.

In other changes, the reference to "Family matters" in former Rule 8(h)(6), is expanded in restyled Rule 8(e)(6) to include domestic relations, parentage, and child protection matters. Further, the mandatory items that must be included in the appendix are expanded to include pre- or post-judgment motions that are at issue on appeal; wills, deeds, leases, trusts, or insurance policies that are at issue on appeal; and several items related to criminal appeals.

The listing of discretionary items that may be included in an appendix, if essential to the understanding of the issues on appeal, is clarified. Particularly, Rule 8(f)(1) is amended to require that copies of exhibits,

including photographs, maps, charts, or diagrams that were presented in color to the trial court or administrative agency shall be reproduced in color by any means, such as scanning or color printing, that reproduces the exhibit in the appendix to appear as close as possible to the way the exhibit appears in the trial court record. This change should end past practice of including poor quality, copy machine reproduced black and white copies of color photos in the appendix.

RULE 9. [RESERVED]

[Moved to become Rule 7A.]

RULE 10. MOTIONS AND OTHER PAPERS IN THE LAW COURT

(a) Motions.

(1) Unless another form is prescribed by these Rules, an application to the Law Court for an order or other relief shall be by motion, shall state with particularity the grounds therefor, and shall set forth the order or relief sought. Supporting papers shall be served and filed with the motion. Motions and supporting papers shall be typewritten and shall conform to subdivision (d) of this Rule.

(2) Any motion filed by counsel representing a party in an appeal that seeks an extension of time or a delay of more than 7 days or that seeks a continuance of any scheduled hearing, oral argument, or other court proceeding, shall indicate that the party represented by counsel filing the motion has been notified of the filing of the motion, and in fact the party represented by counsel shall be notified by counsel of the filing of the motion.

(3) Motions will not necessarily be granted even though assented to by other parties.

(4) The Chief Justice, or another Justice designated by the Chief Justice, may act on motions on behalf of the Court, or may refer motions to the entire Court. All motions will be acted on without oral argument unless otherwise ordered. Motions may be acted upon at any time, without waiting for a response thereto.

(b) Certificate of Service Required. Every motion shall be served on the other parties to the appeal and shall be accompanied by a certificate of service upon the other parties. If the certificate is not included with the motion, the Clerk of the Law Court shall return the motion as incomplete. The Clerk will not docket the attempted filing but will retain a copy and the notice of return. If the moving party refiles the motion with the proper certificate of service, the complete motion will then be accepted and docketed.

(c) Responses. Any party that plans to file a response to a motion shall do so within 7 days after the motion is filed. The Law Court may shorten or extend the time for responding to any motion and may act on a motion before receiving any response. Any supporting papers shall be served and filed with the response. Responses and supporting papers shall be typewritten and shall conform to subdivision (d) of this Rule.

(d) Form of Motions and Other Papers; Number of Copies Required. Motions, responses, and other papers not required to be produced in a manner prescribed by Rule 7A(g) may be typewritten or otherwise duplicated upon opaque, unglazed paper 8-1/2 x 11 inches in size and shall be stapled in the upper-left corner. The typed matter must be double spaced in at least 14-point font, except that footnotes and quotations may appear in 11-point font. Each paper shall contain a caption setting forth the name of the Court (i.e., the Supreme Judicial Court sitting as the Law Court), the title of the case, the Law Court docket number, and a brief descriptive title of the paper. The original and one legible copy of every motion, response, and other paper shall be filed with the Court. Additional legible copies shall be filed as requested by the Clerk of the Law Court.

Restyling Notes – June 2017

Rule 10 relating to filing of motions and other papers in the Law Court other than briefs and appendices is subject to only minor editing except for one substantive change. Rule 10(a)(2) is adopted to require that any motion filed by counsel representing a party that seeks an extension of time or a delay of more than 7 days or seeks a continuance of a scheduled hearing, oral argument, or other proceeding must be noticed to the party that counsel represents. The proposed amendment is designed to eliminate or reduce opportunities for counsel to place blame for delays that they themselves have sought onto either the Court or other parties.

As with briefs, the amended Rule 10(d) requires that the text of motions, other than footnotes or quotations, must be in 14-point font. This is consistent with First Circuit practice.

RULE 11. CONSIDERATION BY THE LAW COURT

(a) Scheduling of Oral Argument.

(1) Scheduling. If the appeal is set for oral argument, the Clerk of the Law Court shall advise all parties of the time and place at which oral argument will be heard.

(2) Continuance. An application for continuance of oral argument must be made by motion filed reasonably in advance of the date fixed for hearing. When a request to continue an oral argument is granted, the Law Court shall have the option of considering the appeal on briefs without oral argument to avoid undue delay in consideration and resolution of the appeal.

(b) Time Allowed for Argument. Each side will be allowed up to 15 minutes for argument. The appellant may reserve up to 3 minutes for rebuttal. On motion filed at least 7 days in advance of the date scheduled for oral argument and for good cause shown, the Law Court may allow additional time for argument.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument.

(d) Cross-Appeals and Separate Appeals. A cross-appeal or a separate appeal in the same case shall be argued with the initial appeal at a single hearing, unless the Law Court otherwise directs. If separate parties support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Nonappearance at Argument. If an appellant fails to appear for oral argument, the Law Court may dismiss the appeal, or it may hear the argument on behalf of the appellee if present and decide the case on the briefs and the argument heard. If an appellee fails to appear at oral argument, the Law Court may hear argument on behalf of the appellant and decide the case

on the briefs and argument heard. If neither party appears, the case will be decided on the briefs unless the Law Court otherwise directs.

(f) Use of Exhibits at Argument.

(1) Disclosure. Any party planning to use any exhibit or display at oral argument shall notify the other parties to the oral argument and the Clerk of the Law Court of the planned use of the exhibit or display at least one business day prior to the time scheduled for oral argument.

(2) Display. Any exhibit or display must be presented in a manner that permits it to be easily seen by each of the Justices without limiting observation of the Court by the public or opposing parties or counsel.

(3) Removal. An exhibit or display shall be removed upon completion of the argument for which it is used unless the opposing party requests that the exhibit remain available for use in that party's argument.

(g) Submission on Briefs.

(1) The Clerk of the Law Court will advise counsel or an unrepresented party when the Law Court has decided to consider a case on briefs without oral argument. Within 7 days after the Clerk has sent this notice of the decision to consider the case on briefs, a party may file a statement setting forth the reasons why oral argument should be entertained and requesting the same.

(2) In an appeal scheduled for oral argument, on motion joined by all parties and for good cause shown, the Law Court may allow the parties to submit the appeal on the briefs without oral argument.

Restyling Notes – June 2017

Rule 11 is subject to editing for clarification in the restyling process. It adds a sentence in Rule 11(a)(2) that when a continuance of an oral argument is requested and granted, the Court may reset the appeal for consideration on briefs. This added note reflects current practice of the Court.

RULE 12. COMPOSITION, CONCURRENCE, AND SESSIONS OF THE LAW COURT

(a) Constitution of the Law Court; Concurrence Required.

(1) 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. When an appeal is in order for conference or oral argument 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.

(2) The Court shall hear and determine such questions of law 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.

(b) Sessions of the Law Court. The Supreme Judicial Court sitting as the Law Court shall hold sessions each year at such times and places as shall be determined by the Chief Justice.

(c) Decisions of the Law Court. Decisions of the Law Court may be reported by several methods, including a signed opinion, a per curiam opinion, or a memorandum of decision. A memorandum of decision decides an appeal but does not establish precedent and will not be published as an opinion of the Court in the Maine Reporter.

Restyling Notes – June 2017

Rule 12 is subject only to minor editing for clarification and additional internal numbering in the restyling process.

RULE 12A. THE CLERK OF THE LAW COURT

(a)(1) Clerk's Office and Filing. All papers or electronic or digital content 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, Room 139, Portland, Maine 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.

(2) After-Hours Filings. The Clerk of the Law Court may not, unless authorized by a Justice of the Law Court, accept filings for other courts or accept filings, pleadings, or other documents filed with or left for the Clerk after normal business hours, except when a Justice of the Law Court has explicitly authorized an after-hours filing on a specific date. Any document filed after hours without explicit authorization shall be date-stamped and deemed to be filed on the next regular business day.

(3) [Reserved]

(4) Electronic Filings and Fax Filings. Except as otherwise permitted or required by these Rules, filings by electronic transmission of data or by means of a fax machine CD, DVD, flash drive, email, or any other method for electronic or Internet filing in place of the filing of paper documents required by these Rules is not permitted.

(b) Clerk's Authority. The Clerk of the Law Court is authorized to take the following actions for the Court:

(1) Grant motions filed pursuant to M.R. App. P. 10 to:

(A) Enlarge the time for the filing of a brief or appendix for up to 7 days.

(B) With the agreement of the parties, consolidate appeals involving the same parties.

(2) Dismiss an appeal, pursuant to M.R. App. P. 7(d), when the appellant has failed to file the required brief within 7 days after expiration of the time specified by M.R. App. P. 7(b).

(3) Dismiss sentence review proceedings filed pursuant to M.R. App. P. 20, when the sentence sought to be appealed was less than one year of incarceration, as addressed in 15 M.R.S. § 2151.

Any order entered by the Clerk of the Law Court, pursuant to paragraphs 1, 2, or 3, above, granting or denying a motion to enlarge time or dismissing an appeal may be reviewed by a single justice of the Law Court upon the filing of a motion for review, filed pursuant to M.R. App. P. 10, within 7 days after the entry of the Clerk's order from which review is sought.

(4) Enter Orders on Court Actions. After appropriate consideration by the Court, or a panel thereof, the Clerk shall enter orders reflecting the Court's action on motions for reconsideration pursuant to M.R. App. P. 14(b), and petitions to allow full appellate review pursuant to M.R. App. P. 19, 20, or 23.

Restyling Notes – June 2017

Rule 12A is subject to editing for clarification, including upgraded references to digital transfer devices, in the restyling process. The Clerk's authority to receive filings is expanded to include electronic and digital content, but only when explicitly authorized or required by the Rules or by an order of a Justice of the Court. For example, Rule 5(b)(2)(B)(iii) allows filing of an electronic recording in certain circumstances; Rule 6(c)(1) requires filing of an electronic copy of the reporter's transcript; and Rule 7A(i)(2) requires filing of an electronic copy of each brief. The prohibitions on electronic or fax filings in current Rules 12A(3) and (4) are combined into Rule 12A(4).

The Rule 12A amendment includes only one substantive change. That change amends Rule 12A(b)(2) to eliminate the direction to the Clerk of the Law Court to notify an appellant when that appellant's brief has not been timely filed. Instead, the Clerk is directed to dismiss the appeal if the appellant's brief is not filed 7 days after the filing deadline.

RULE 12B. PUBLIC ACCESS TO PROCEEDINGS AND RECORDS

(a) Record on Appeal. The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any person to the same extent as that record was available for inspection and copying in the trial court.

(b) Law Court File. The file maintained by the Clerk of the Law Court for each appeal, other than files for appeals from child protection proceedings and other files made confidential by statute, shall be available for public inspection and copying, except that any documents or images that were transmitted to the Law Court by the trial court under seal and any documents providing identifying information regarding parties, witnesses, or jurors shall be available for inspection and copying only to the same extent as in the trial court.

(c) Briefs. The briefs filed with the Law Court, other than briefs in appeals from child protection proceedings, shall be available for inspection and copying by any person.

(d) Appendices. The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters: (1) an appeal from a child protection proceeding; (2) proceedings involving an adoption or guardianship or a petition for adoption or guardianship; (3) juvenile proceedings in which the record is sealed in the trial court; (4) any proceeding in which the care, custody, and support of a minor child is an issue; and (5) any proceeding in which a document that is confidential by statute or was filed under seal in the trial court is contained in the appendix.

No appendix shall be filed as "under seal" or "confidential" except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4).

(e) Oral Arguments. Oral arguments on the merits of appeals are public proceedings.

(f) Decisions. Opinions of the Law Court on appeals and decisions of single Justices of the Law Court are public documents.

Restyling Notes – June 2017

Rule 12B is subject to minor editing for clarification, with addition of internal numbering, particularly regarding treatment of certain confidential documents, in the restyling process. It includes no substantive changes.

RULE 13. COSTS AND INTEREST ON JUDGMENTS IN CIVIL CASES

(a) To Whom Costs Are Allowed. Costs shall be taxed against the unsuccessful party to a civil appeal unless the Law Court otherwise directs. If an appeal in a civil case is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court. When a judgment is affirmed in part, costs shall be allowed only as ordered by the Law Court.

(b) Costs in the Law Court. Costs in the Law Court shall be allowed as follows:

(1) Briefs. The actual cost of printing or otherwise reproducing briefs, but not more than $5.00 per page, for not more than a total of 70 pages for an initial brief and 20 pages for a reply brief.

(2) The Appendix. The actual cost of printing or otherwise reproducing the appendix, but not more than $5.00 per page, for not more than a total of 300 pages (150 sheets of paper, printed on both sides).

(3) Any Transcripts. The cost of transcripts made by a reporter may be taxed at the rate actually paid to the reporter, but not exceeding the rate established by order of the Chief Justice of the Supreme Judicial Court.

(4) Travel. Travel and attendance as in the trial court.

(5) Other Costs. Other items of costs may be allowed as determined by the provisions of M.R. Civ. P. 54(d)-(g), when such items are required to prosecute or defend the appeal.

(c) Filing Bill of Costs. A party that desires such costs to be taxed shall state them in a verified bill of costs, which the party shall file with the Clerk of the Law Court, with proof of service, within 14 days after the issuance of the mandate.

(d) Clerk to Certify Costs. On request of the prevailing party the Clerk of the Law Court shall certify in detail to the trial court the amount of costs taxed in the Law Court.

(e) Interest on Judgments. When a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable as provided by law. When a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the opinion shall contain instructions with respect to allowance of interest if the prevailing party's claim to interest has been brought to the attention of the Law Court by brief or oral argument.

(f) Sanctions. If, after a separately filed motion or a notice from the court and a reasonable opportunity to respond, the Law Court determines that an appeal, motion for reconsideration, argument, or other proceeding before it is frivolous, contumacious, or instituted primarily for the purpose of delay, it may award to the opposing parties or their counsel treble costs and reasonable expenses, including attorney fees, caused by such action.

Restyling Notes – June 2017

Rule 13 is subject to editing for clarification and additional separation and internal numbering in the restyling process. Rule 13(b)(1) is amended to limit recoverable costs for briefs to 70 pages for an initial brief and 20 pages for a reply brief. The current Rule 13(b) limits recoverable costs for briefs to a total of 75 pages.

RULE 14. MANDATE; RECONSIDERATION; AND SUSPENSION OF THE RULES IN THE LAW COURT

(a) Issuance of Mandate. The mandate of the Law Court, with an opinion or order resolving any appeal, shall be issued by the Clerk of the Law Court by transmitting an attested copy thereof to the trial court. Copies of the mandate shall be emailed to those parties to the appeal who have provided a proper email address. No paper copy of the mandate will be provided to the parties to the appeal who are represented by counsel. The opinion or decision of the Law Court sent to the parties on the day the opinion or decision is published, with the mandate appearing at the end, shall constitute notice of the mandate, and no further notice shall be provided.

(1) Criminal Appeals. The mandate of the Law Court in a criminal appeal shall issue the day that the decision resolving the appeal is published or the first business day thereafter.

(2) Civil Appeals. The mandate of the Law Court in a civil appeal involving a child protective matter, a parental rights matter, a guardianship, an adoption, a contempt, or a temporary or permanent injunction shall issue the day that the decision resolving the appeal is published or the first business day thereafter. The mandate of the Law Court in any other civil appeal shall issue 14 days after the date of decision of the Law Court, unless the time is shortened or enlarged by order of the Law Court.

(3) (A) Stay of the Mandate. A motion for a stay of the mandate, or for a stay of the effect of a mandate already issued, must be filed with the Clerk of the Law Court within 14 days after the date of the decision. The timely filing of a motion for reconsideration in a civil appeal, prior to issuance of the mandate, will stay the mandate until disposition of the motion unless otherwise ordered by the Law Court. The issuance of the mandate may be stayed or the effect of a mandate already issued may be stayed on motion for good cause shown, accompanied by an affidavit of the moving party or the moving party's attorney setting forth all relevant facts.

(B) Law Court Action. After receipt of a motion for stay of the mandate, the Law Court may act on the motion sua sponte or seek comments from other parties to the appeal. After appropriate consideration, the Law Court may grant or deny the motion, and if the motion is granted in whole or in part, attach such terms and conditions to granting that stay as it deems just.

(C) Appeals to the United States Supreme Court. When the issuance of the mandate has been stayed pending a petition to the Supreme Court of the United States for a writ of certiorari, the receipt by the Clerk of the Law Court of an order granting the petition shall be effective to continue the stay until final disposition of the matter by the Supreme Court of the United States.

(b) Motions for Reconsideration.

(1) (A) A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall be filed with the Clerk of the Law Court within 14 days after the date of that decision. The motion shall state with particularity the points of law or fact that 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. An original and 7 copies of the motion and any supporting papers shall be filed and shall conform to Rule 10(d).

(B) 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.

(2) A motion for reconsideration will not be granted unless ordered by a Justice who concurred in the decision and who acts with the concurrence of a majority of the Justices who participated in the original decision and remain available and qualified to act on the motion.

(3) If a motion for reconsideration is granted, the Law Court may make a final disposition of the cause without re-argument, may restore it to the calendar for reconsideration, or may make such other orders as are appropriate. Frivolous or repetitive motions for reconsideration may result in the imposition of appropriate sanctions.

(c) Suspension of Rules. In the interest of expediting decision upon any matter, or for other good cause shown, the Law Court may modify or suspend any of the requirements or provisions of these Rules, except those addressing filing requirements and time limits in Rules 2A, 2B, 2C, and 14(b), on application of a party or on its own motion, and may order proceedings in accordance with its direction.

Restyling Notes – June 2017

Rule 14 is amended to add internal separations and numbering consistent with the restyling practice. Consistent with what appears to be current practice, the form for motions for reconsideration must follow the form for other motions filed with the Law Court, as specified in Rule 10(d). The previous Rule had referenced former Rule 9(f), which addressed the form for briefs, including covers.

The mandate rule is also clarified to specify that the mandate in civil cases involving child protective matters, parental rights matters, guardianship, contempt, or temporary or permanent injunctions shall issue promptly after decision. As presently, the mandate in other civil appeals

would issue 14 days after decision. The rules are also clarified to indicate that a stay of the mandate or the effect of the mandate may be sought for any further appeals or reconsideration, so that such appeals or reconsideration are not barred if requested within 14 days after the date of the Law Court decision at issue. The copy of the decision provided to the parties constitutes the notice of issuance of the mandate that appears at the end of the Law Court decision. No further notice is provided.

RULES 15 - 18. [RESERVED]

[Former Rules 15 and 16 moved to become Rules 1A and 1B.]

II. SPECIAL APPEAL PROCEEDINGS

RULE 19. DISCRETIONARY CRIMINAL APPEALS

(a) (1) Appeals Covered. This Rule covers those criminal appeals 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.

(2) Specifically Included Appeals. The appeals covered by this Rule include:

(A) An appeal from a ruling 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;

(B) An appeal by a person whose probation is revoked, or whose conditions of probation are modified pursuant to 17-A M.R.S. § 1202(2), when the appeal is authorized pursuant to 17-A M.R.S. § 1207(1);

(C) An appeal by a person whose supervised release is revoked, when the appeal is authorized pursuant to 17-A M.R.S. § 1233;

(D) An appeal by a person determined to have inexcusably failed to comply with a court-imposed deferred disposition requirement and thereafter sentenced, when the appeal is authorized pursuant to 17-A M.R.S. § 1348-C;

(E) An appeal by a person whose administrative release is revoked, when the appeal is authorized pursuant to 17-A M.R.S. § 1349-F;

(F) 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;

(G) An appeal from a final judgment in an extradition proceeding pursuant to 15 M.R.S. § 210-B(1), when the appeal is taken by the petitioner;

(H) 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 by the convicted person or by the State;

(I) 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

(J) 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.

(b) Rules Applicable. The discretionary appeals covered by this Rule shall proceed in accordance with the Maine Rules of Appellate Procedure, subject to the modifications stated in this Rule or as otherwise required by statute.

(c) Memorandum Required on Appeal. Within 21 days after the date on which the transcript is filed in the Law Court, or, if no transcript is ordered, within 21 days after filing a notice of appeal, the party filing the appeal shall file with the Clerk of the Law Court 8 copies of a memorandum giving specific and substantive reasons why the issue or issues identified for prosecution of the appeal warrant the issuance of a certificate of probable cause authorizing consideration of the appeal on the merits by the Law Court. The memorandum shall not exceed 20 pages and shall otherwise conform to the requirements of Rule 7A(g) relating to the form of briefs. On motion and

for good cause shown, the Law Court may allow additional time to file a memorandum.

No reply memorandum shall be filed by a party who did not file the appeal.

Until the Law Court rules on the request for a certificate of probable cause, no further briefing pursuant to Rule 7 or 7A shall be submitted and no appendix pursuant to Rule 8 shall be prepared.

(d) (1) Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal. Unless the Law Court otherwise directs, within 56 days after the date of the filing 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, if a hearing on the matter was held and recorded. The transcript shall be filed in accordance with Rule 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:

(A) For an appeal from a ruling on a motion for correction or reduction of sentence, the hearing, if any, on the motion for correction or reduction of sentence.

(B) For an appeal from a ruling on a motion for revocation or modification of probation, the hearing on the motion for revocation or modification of probation.

(C) For an appeal from a ruling on a motion for revocation of supervised release, the hearing on the motion for revocation of supervised release.

(D) For an appeal from a ruling of inexcusable failure to comply with a court-imposed 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.

(E) For an appeal from a ruling on a motion for revocation of administrative release, the hearing on the motion for revocation of administrative release.

(F) For an appeal from a final judgment in a post-conviction review proceeding, the hearing on the motion for post-conviction relief, if any.

(G) For an appeal from a final judgment in an extradition proceeding, no transcript as specified by Rule 19(d)(2).

(H) For an appeal from a ruling on a motion to order DNA analysis, the hearing on the motion to order DNA analysis.

(I) (i) 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.

(ii) 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.

(J) 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) Generally No Duty to Prepare and File Transcript of Extradition Hearings.

(A) No transcript shall be prepared of any hearing on a petition contesting extradition. In lieu of a transcript of hearing, the justice or judge who heard the petition for extradition shall, within 14 days after 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.

(B) 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 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.

(f) Compensation for Hearing Transcript. Compensation for the hearing transcript shall be as provided in Rule 5(b)(1)(B).

(g) Denial of a Certificate of Probable Cause. If the Law Court denies a certificate of probable cause, the Clerk of the Law Court shall forthwith send to each party a written notice of that denial.

(h) Granting of a Certificate of Probable Cause. If the Law Court issues a certificate 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 of probable cause shall be treated in the same manner as the filing of a notice of appeal pursuant to Rule 2A(b)(1). If an appeal is pending pursuant to Rule 2A involving the same criminal judgment, the Rule 19 appeal shall be treated as part of the Rule 2A appeal.

(i) Additional Transcript Orders.

(A) Within 7 days after the docketing by the Clerk of the Law Court of the order granting the certificate of probable cause, the appellant shall file with the reporter and the Clerk of the Law Court and shall serve on the appellee a transcript order for any other transcripts or portions thereof, not already prepared, that the appellant deems necessary for prosecution of the appeal. Within 7 days after receipt of the appellant's transcript order, the appellee may order additional transcripts or portions thereof in accordance with Rule 5(b)(1)(A).

(B) Costs of the transcript shall be paid in accordance with Rule 5(b)(1)(B).

(C) If a non-indigent appellant fails to make appropriate arrangements with the reporter for payment of the transcript within 7 days as provided by Rule 5(b)(1)(B), the Clerk of the Law Court shall be notified in

accordance with Rule 5(b)(1)(B), and the appeal shall proceed without any additional transcript.

(j) Clerk's Record. After docketing of the order granting the certificate of probable cause and notification to the clerk, any further clerk's record shall be filed with the Law Court in the same manner as provided by Rule 6.

(k) Notice of Schedule for Filing Briefs and the Appendix. Upon filing of the record, including any additional transcripts, the Clerk of the Law Court shall notify the parties of the schedule for filing briefs in accordance with Rule 7. The appeal shall then proceed as other appeals under the Maine Rules of Appellate Procedure.

Restyling Notes – June 2017

Rule 19 was revised, effective July 29, 2016. It is further amended as follows.

Rule 19(a) is separated into two subdivisions. Rule 19(a)(2)(B)—formerly Rule 19(a)(2)—is amended to cover appeals of probation modification orders.

Rule 19(c) is amended to recognize that sometimes the State may be an appellant; accordingly, the prohibition on filing reply memoranda is extended to any other party to the trial court action.

Rule 19(d)(1) is amended to modify the 56-day transcript filing deadline as in Rule 6(c)(1).

Rule 19(d)(2)(A) is amended to allow a judge 14 days from the filing of the notice of appeal to file written findings.

Finally, as part of this restyling, the Rule is amended to add subparagraphs to Rule 19(d)(2) and Rule 19(g).

RULE 20. APPEAL OF SENTENCE

(a) (1) Application for Leave to Appeal. An appeal to the Law Court by a defendant for review of sentence shall be as provided in 15 M.R.S. §§ 2151-2157 and these Rules. Any defendant qualified under 15 M.R.S. § 2151 to seek sentence review may apply to the Law Court by filing an application to allow an appeal of sentence with the clerk of the court in which sentence was imposed.

(2) The application for review of sentence shall conform to the Judicial Branch form for sentence appeals. The defendant or the defendant's attorney shall sign the application. The clerk of the court in which sentence was imposed shall mail a date-stamped copy of the application to the court reporter. The clerk shall note in the criminal docket the giving of such notification, with the date thereof.

(3) When a court imposes a sentence for which a defendant, pursuant to 15 M.R.S. § 2151, is qualified to seek sentence review, the defendant shall be advised of the right to seek sentence review. If an unrepresented defendant requests, the court shall cause an application for review of sentence to be prepared and filed on behalf of the defendant forthwith.

(b) Time for filing an Application for Leave to Appeal. The time within which to file an application to allow an appeal of sentence shall be as provided in Rule 2B(b)(1).

(c) Docketing the Application in the Law Court. Upon receipt of the application to allow an appeal of sentence, the clerk of the court in which sentence was imposed shall forthwith transmit to the Law Court the following: a copy of the application with the date of the filing; a copy of the docket entries, the charging instrument, and the order of judgment and commitment; a copy of the M.R.U. Crim. P. 32 pre-sentence report, if any; and a copy of any other material, including documentary exhibits, offered to or considered by the sentencing court in connection with the sentencing proceeding. The case shall be marked "Sentence Appeal," on the docket.

The court in which sentence was imposed shall take no further action pending disposition by the Law Court of the application for review of sentence and, if the application is granted, shall take no further action pending ruling

on the sentence appeal except as provided in Rule 3(b), but with the further limitation, as reflected in 15 M.R.S. § 2157, that the court may not stay execution of sentence or set bail.

(d) Duty of Reporter to Prepare and File Sentencing Transcript. Unless the Law Court otherwise directs, within 42 days after the date of filing of the application to allow appeal of sentence, with notice provided by the date-stamped copy of the application from the clerk of the court in which sentence was imposed, the court reporter shall file the transcript of the sentencing hearing with the Clerk of the Law Court.

If the court reporter anticipates that the transcript cannot be prepared within the 42-day limit, the court reporter shall file an application for an extension as provided in Rule 6(c)(2).

(e) Correction or Modification of Record. The court in which sentence was imposed, the Sentence Review Panel of the Supreme Judicial Court, and the Law Court may correct or supplement the record as provided in Rule 5(e), except that the Panel and Law Court may, without motion or suggestion, direct that a supplemental record be transmitted by the clerk of the court in which sentence was imposed.

(f) Denial of Application for Leave to Appeal. If the Sentence Review Panel of the Supreme Judicial Court denies the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to the clerk of the court in which sentence was imposed and to each counsel of record a written notice of that denial. As provided in 15 M.R.S. § 2152, a denial of the application is final and subject to no further review.

(g) Docketing Sentence Appeal in Law Court. If the Sentence Review Panel of the Supreme Judicial Court grants the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to each party and to the clerk of the court in which sentence was imposed a copy of the order granting the application, together with a written notice of the Law Court docket number and the date within which any further record on appeal must be filed.

(h) Appeal Processing. The order granting the application to allow an appeal of sentence shall have the same effect for appeal process scheduling

as a notice of appeal pursuant to Rule 2A(b)(1). A sentence appeal in the Law Court after an application for leave to appeal is granted shall proceed in accordance with the general appeal provisions of Maine Rules of Appellate Procedure, except that any party desiring transcripts of the proceeding not already in the file shall file a transcript order form within 7 days after notice that leave to appeal has been granted. If an appeal is pending pursuant to Rule 2A involving the same criminal judgment, the sentence appeal shall be considered as part of that appeal.

(i) Relief. If the Law Court, pursuant to 15 M.R.S. § 2156, remands the case to the court in which sentence was imposed for further proceedings and resentencing or solely for resentencing, any justice or judge of that court may act thereon, unless the Law Court otherwise directs.

Restyling Notes – June 2017

Rule 20 was not subject to revision, except for changing the calculation of the 42-day deadline for filing a reporter's transcript to conform to the change in in Rule 6(c)(1), and minor editing and citation correction, in the restyling process.

RULE 21. CRIMINAL APPEALS BY THE STATE

(a) Procedure. Appeals by the State in criminal cases when authorized by statute shall be subject to the same procedure as that for other appeals, except as provided by this Rule.

(b) Appeals by the State Requiring Approval of Attorney General. As to any State-initiated appeal requiring approval of the Attorney General of Maine, the notice of appeal shall be accompanied by the written approval of the Attorney General, which shall become part of the record. The written approval may be filed at a later date, provided that the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted.

(c) Dismissal of Appeal. The Law Court shall, on motion, order the dismissal of an appeal brought pursuant to this Rule if it finds that such appeal has not been diligently prosecuted.

(d) Counsel Fees on Appeal by the State. When an appeal is taken by the State, the Law Court shall allow the defendant reasonable counsel fees and costs for defense of the appeal.

(e) Tolling of Appeal Period. If the State files a motion for findings of fact and conclusions of law pursuant to M.R.U. Crim. P. 41A(d), the appeal period shall be tolled during the pendency of the motion. If the motion is granted, the appeal period shall begin to run once either (1) written findings and conclusions are entered or (2) a notation reflecting that no findings and conclusions have been made is entered on the criminal docket.

Restyling Notes – June 2017

Rule 21 was not subject to substantive editing in the restyling process. Rule 21(b) regarding the written approval of the Attorney General for appeals was edited to create a separate sentence referencing the subsequent filing of a written approval.

RULE 22. REVIEW OF RULINGS AND ORDERS OF THE PUBLIC UTILITIES COMMISSION

(a) (1) Review of rulings and orders of the Public Utilities Commission, including applications for relief pending final determination, shall be governed by these Rules.

(2) Whenever a statute or rule regulating the taking of an appeal from a judgment of the trial court in civil actions uses the term "the court," "the clerk," or a similar term, they shall for the purpose of a proceeding governed by this Rule be read, respectively, as "the commission," "the secretary of the commission," or other appropriate terms.

(b) On an appeal from the Public Utilities Commission to the Law Court, the appellant shall pay the filing fee by check, payable to the Clerk of the Law Court, to the secretary of the commission when filing the notice of appeal, and the secretary of the commission shall transmit that check representing the filing fee to the Clerk of the Law Court along with the certified copy of the notice of appeal pursuant to Rule 3(a).

Restyling Notes – June 2017

Rule 22 is subject to minor editing for internal numbering in the restyling process. It includes no substantive changes. The new Rule 6(d) regarding electronic or digital record filing practice will apply to many Rule 22 appeals to the Law Court.

RULE 23. REVIEW OF DECISIONS OF THE WORKERS' COMPENSATION BOARD AND APPELLATE DIVISION

(a) When and How Taken.

(1) A party in interest may seek review by the Law Court of a decision of the Workers' Compensation Board or its Appellate Division by filing with the Clerk of the Law Court a copy of the decision within 20 days after receipt of notice of the filing of the decision by the Appellate Division or the Board. The party petitioning for appeal shall file with the copy of the decision a notice of appeal indicating the points intended to be addressed on appeal.

(2) The petitioning party shall also pay to the Clerk of the Law Court the required filing fee.

(3) Within the original 20 days after receipt of notice of the decision or within 14 days after the date of the first filing of a notice of appeal with the Clerk of the Law Court, any other party in interest may file a notice of appeal indicating any additional point that the other party may wish to address in an appeal.

(4) When more than one party files a notice of appeal, the party who files the first notice of appeal shall be deemed to be the petitioner for purposes of application of this Rule.

(b) Petition for Appellate Review and Response.

(1) Form of Petition.

(A) Within 20 days of the filing of the decision or the last filed, timely notice of appeal, the petitioner shall file with the Clerk of the Law Court 10 copies of a petition for appellate review, which shall state the procedural

and factual history of the case, the error alleged to have been committed, and the manner in which the petition meets the criteria for granting appellate review stated in Rule 23(b)(2).

(B) The petition for appellate review and any response shall be typed in at least 14-point font with double spacing between each line of type except for block quotations. The petition and any response filed by any other party shall be in a single document not exceeding 10 pages.

(2) Review Criteria. The Law Court may grant a petition for appellate review when:

(A) The case clearly raises an important question of law that should be addressed because (i) the question of law is one that is likely to recur unless resolved, or (ii) there is a need to consider establishing, implementing, or changing an interpretation of law; or

(B) The decision on appeal contains a substantial error on a question of law resulting in substantial prejudice to one or more of the parties to the Board or the Appellate Division proceeding; or

(C) The decision on an appeal is affected by a substantial and prejudicial violation of the statutory or due process procedural rights of one or more of the parties to the Board proceeding.

(3) No Appeal of Fact-Finding. As provided by statute, there shall be no appeal upon findings of fact.

(4) Petition Attachments. There shall be appended to the petition for appellate review, a copy of the decision of the Appellate Division or Workers' Compensation Board, and copies of any other relevant decisions of the Board, the Appellate Division, or the former Workers' Compensation Commission that are necessary to evaluate the issues raised in the petition. Failure to attach to a petition for appellate review a copy of the challenged decision of the Appellate Division or the Workers' Compensation Board may result in a summary dismissal of that petition.

(5) Response. Within 14 days any other party in interest may file with the Clerk of the Law Court 10 copies of a response to the petition for appellate review. The response may not exceed 10 pages.

(6) Service of Copies. At the time of filing of a petition for appellate review or the response thereto, the party filing the petition or response shall also file one copy with the General Counsel of the Workers' Compensation Board and serve one copy on each of the other parties in interest.

(c) Granting or Denying the Petition for Appellate Review. The petition for appellate review shall be granted or denied as provided in 39-A M.R.S. § 322(3). If the petition is granted, the order granting the petition shall be treated as the notice of appeal, the first petitioner shall be treated as the appellant, and the appeal shall proceed in accordance with these Rules as applicable to an appeal in a civil action; except that:

(1) In cases when the legal error is apparent on the face of the decision of the Appellate Division or the Board, the Law Court may summarily modify or vacate the decision and remand to the Appellate Division or the Board for further proceedings.

(2) When the appeal is from a decision of the Appellate Division of the Workers' Compensation Board issued pursuant to 39-A M.R.S. § 321-B:

(A) The appellant shall prepare the record on appeal and file the record with the Clerk of the Law Court within 35 days after the date the petition is granted;

(B) The appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days after the filing of the record on appeal with the Clerk of the Law Court;

(C) Either party may file a reply brief within 14 days after service of the brief of the other party;

(D) The record on appeal shall consist of the Appellate Division's docket sheet, the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer or the Appellate Division has taken judicial notice, a copy of the decision of the

Appellate Division, and a copy of the decision and findings of the hearing officer.

(3) When the appeal is from a decision of the Workers' Compensation Board issued pursuant to 39-A M.R.S. § 320:

(A) The Executive Director of the Workers' Compensation Board shall file the record on appeal with the Clerk of the Law Court within 14 days after the date the petition is granted;

(B) The appellant shall file the appendix to the briefs and both of the parties shall file their briefs within 14 days after the petition is granted;

(C) Either party may file a reply brief within 14 days after service of the brief of the other party;

(D) The record on appeal shall consist of the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer has taken judicial notice, and copies of the decision and findings of the hearing officer and the decision of the Board.

(4) If after granting a petition for appellate review and after consideration of the briefs and any oral argument, the Law Court is of the opinion that the criteria stated in paragraph (b)(2) have not been met and that the petition was improvidently granted, the Law Court may dismiss the appeal.

Restyling Notes – June 2017

Rule 23 is subject to editing for clarification and additional internal separation and numbering in the restyling process. It includes no substantive changes. The 20-day period for filing appeals in Rule 23 is set by statute, 39-A M.R.S. § 322(1). Therefore, it is not changed to a time period measured in weekly increments, as is the practice with time limits in the Rules not controlled by statute. The transition provision adopted when the Appellate Division was created in 2012 is eliminated.

RULE 24. REPORT OF CASES

(a) Report by Agreement of Important or Doubtful Questions. When the trial court is of the opinion that a question of law presented to it is of sufficient importance or doubt to justify a report to the Law Court for determination, it may so report when:

(1) all parties appearing agree to the report;

(2) there is agreement as to all facts material to the appeal; and

(3) the decision thereon would, in at least one alternative, finally dispose of the action.

(b) [Reserved]

(c) Report of Interlocutory Rulings. If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

(d) Determination by the Law Court. Any action reported pursuant to this Rule shall be entered in the Law Court and proceed as any other appeal, with the plaintiff or the party aggrieved by a reported interlocutory ruling being treated as the appellant. In a civil case, the appellant shall pay the fee for filing of a notice of appeal promptly following entry of the order of report.

Restyling Notes – June 2017

In current Rule 24 regarding report of cases, Rule 24(a) and (b) are essentially duplicative. Current Rule 24(a) purports to address important or doubtful questions of law; current Rule 24(b) purports to address issues of law relating to agreed facts. However, both address reports of what were essentially questions of law. In the restyling, current Rule 24(a) is reorganized, without substantive change, and the duplication in current Rule 24(b) is eliminated. Rule 24(c) addresses reports when parties may not

be in agreement on the report of the interlocutory ruling. When facts are not in dispute, the matter can be submitted to the Law Court on report, assuming it otherwise qualifies for consideration. If there are any material facts in dispute, the matter cannot be referred to the Law Court until the factual disputes have been resolved by a final judgment in the trial court.

RULE 25. CERTIFICATION OF QUESTIONS OF LAW BY FEDERAL COURTS TO THE LAW COURT

(a) When Certified. When it shall appear to the Supreme Court of the United States or to any of the Courts of Appeals or District Courts of the United States that there are involved in any proceeding before it one or more questions of law of this State that may be determinative of the cause and that there is no clear controlling precedent in the decisions of the Supreme Judicial Court, such federal court may, upon its own motion or upon request of any interested party, certify such questions of law of this State to the Supreme Judicial Court sitting as the Law Court, for instructions concerning such questions of state law.

(b) Contents of Certificate. The certificate provided for herein shall contain the name and docket number of the case, a statement of facts showing the nature of the case and the circumstances out of which the question of law arises, and the question or questions of law to be answered. Subject to other direction by the Supreme Judicial Court, the certificate shall also specify which party shall be treated as the appellant in the proceedings before the Supreme Judicial Court.

(c) Preparation of Certificate. The certificate may be prepared by stipulation or as directed by the certifying federal court. When prepared and signed by the presiding judge of the federal court, 12 copies thereof shall be certified to the Supreme Judicial Court by the clerk of the federal court and under its official seal. The Supreme Judicial Court may, in its discretion, require the original or copies of all or any portion of the record before the federal court to be filed with said certificate where, in its opinion, such record may be necessary in answering any certified question of law.

(d) Costs of Certificate. The costs of the certificate and filing fee shall be equally divided among the parties unless otherwise ordered by the Supreme Judicial Court.

(e) Hearing Before the Law Court. For the purpose of measuring the time for filing briefs and for holding the oral argument, the filing and docketing of the certificate in the Supreme Judicial Court shall be treated the same as the filing and docketing of the record on an appeal from the trial court pursuant to Rule 7. From the filing and docketing of the certificate, the matter shall proceed as any appeal pursuant to these Rules.

(f) Intervention by the State. When the constitutionality of an act of the Legislature of this State affecting the public interest is drawn in question upon such certification to which the State of Maine or an officer, agency, or employee thereof is not a party, the Supreme Judicial Court shall notify the Attorney General and shall permit the State of Maine to intervene for presentation of briefs and oral argument on the question of constitutionality.

Restyling Notes – June 2017

Rule 25 is subject to minor editing for clarification in the restyling process. It includes no substantive changes.

Dated: June 6, 2017

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.