

# **A CITIZEN'S GUIDE FOR APPEALS TO THE MAINE SUPREME JUDICIAL COURT**

(April, 2007)

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## I. INTRODUCTION

This is a guide for taking appeals to the Maine Supreme Judicial Court. Basic principles for appeals are discussed for relatively common cases such as divorces; final protection from abuse determinations; criminal trials; and contract, negligence, damages, and debt collection claims. This guide does not discuss appeals from District Court decisions in Forcible Entry and Detainer (M.R. Civ. P. 80D) and Small Claims (M.R. Civ. P. 80L) actions, because those appeals must be presented to the Superior Court. *See* M.R. Civ. P. 76C-76G. Likewise, this guide does not discuss appeals from local government and state agency decisions, which also are presented, initially, to the Superior Court for decision. *See* M.R. Civ. P. 80B & 80C. However, once such appeals have been resolved by the Superior Court, the procedures for any further appeal to the Maine Supreme Judicial Court follow the rules discussed in this guide.

**Particularly important points or requirements appear in bold type.** A section of definitions of frequently used legal terms and abbreviations appears at the end of this guide. For a more detailed information on specific issues, there are cross-references to the Maine Rules of Appellate Procedure (M.R. App. P.).

## II. CONSIDERING AN APPEAL

In considering an appeal, be aware of several points:

**(1) Party Status Required.** To appeal, you must have been a “party” to the trial court proceeding—that is, a plaintiff, a defendant, or, occasionally, an intervenor. M.R. App. P. 2(a)(2). Generally, those who were not parties to the trial court proceeding do not have a right to appeal.

**(2) The Decision Must Be “Final.”** Appeals generally may be taken only from “final” decisions—that is, decisions (also called judgments) that resolve all pending claims leaving nothing else for the trial court to do in the case. Appeals generally are not allowed from interim trial court decisions or rulings that do not finally decide the case. Subject to limited exceptions, there is no immediate right of appeal from rulings that, for example, (i) admit or exclude evidence, (ii) decide that some claims or issues will be tried while others will not be tried, (iii) resolve a dispute about discovery or disclosure of information and evidence, or (iv) enter an order

that is characterized as “preliminary,” “interim,” “temporary,” or is otherwise issued during the course of the proceeding, but before a final decision. Once a final decision is made, a party may appeal any earlier ruling that was properly opposed or objected to at the time. M.R. App. P. 2(b)(4).

**(3) Review is Limited to the Record.** Decision-making on an appeal is based on the “record” developed in the trial court. The record in the trial court includes the papers presented by the parties that are in the court file; any oral testimony, arguments, or rulings; the exhibits presented to the trial court; and the written rulings by the judge. M.R. App. P. 5 & 6. Oral testimony, oral arguments, or oral rulings by the judge are part of the record, and will be considered on appeal if the trial court hearing was recorded and a transcript is prepared and presented to the Law Court on appeal. The party filing the appeal is usually responsible for ordering and paying for the transcript. M.R. App. P. 5(b). The transcript must be ordered when the notice of appeal is filed. M.R. App. P. 2(a)(1).

**(4) No New Trial.** An appeal is not a new trial. The Law Court will not consider new testimony, new exhibits, or other material relating to the facts of the case that were not presented to the trial court. When new facts, new testimony, or new exhibits are discovered for the first time after trial, and could not have been discovered before trial, the appropriate remedy is a motion to the trial court for a new hearing or trial. M.R. Civ. P. 59 & 60(b); M.R. Crim. P. 33. Such materials cannot be presented to the Law Court on appeal.

**(5) Objection to Trial Court Ruling Necessary.** Most trial court rulings on the facts, on the evidence, or on procedural matters must have been opposed or objected to in the trial court before any challenge to such a ruling will be considered on appeal. There is an exception to this rule for what are called “obvious” errors, where the trial court makes a ruling that is not correct as a matter of law and the challenged ruling substantially affects personal, property, or liberty rights or the fundamental fairness of the proceeding. M.R. Crim. P. 52(b); M.R. Evid. 103(e). The “obvious error” rule is infrequently applied to overturn a ruling in a criminal case and almost never applied to overturn a ruling in a civil case. Thus, making a proper objection or argument in the trial court is essential to serious consideration of most claims of error on appeal.

**(6) Review is Deferential.** The Law Court will make its own decision as to whether a trial court ruling on an issue of law was correct or incorrect. The Law Court gives the trial court no “deference” in deciding questions of law. However, on factual and procedural issues, the Law Court will engage in what is called a “deferential” review of the record. Deferential review means that the Law Court will accept the trial court’s decision as to which witnesses to believe and which witnesses not to believe, what significance to attach to particular evidence or exhibits, and what inferences may or may not be drawn from evidence or exhibits. The Law Court will not make a new decision about the facts based on its reading of the record. If there is any evidence in the record to support the trial court’s decisions about the facts, the Law Court will accept the facts found by the trial court as the facts of the case.

Trial court rulings on trial process issues and other matters in which the trial court has a range of choice will be examined to determine whether the trial court “abused its discretion” in making the ruling. Even if the justices hearing the appeal believe that they would have ruled differently, the Law Court will uphold the ruling of the trial court unless it determines that the trial court exceeded the bounds of its discretion or that there is no rational basis for the trial court’s ruling.

Any ruling by the trial court that may be in error will also be reviewed by the “harmless error” standard set in the rules. M.R. Civ. P. 61; M.R. Crim. P. 52(a); M.R. Evid. 103(a). This means that a trial court ruling, even if in error, will not result in reversal of the trial court’s decision if the Law Court determines that the error was “harmless”—that is that the error did not result in substantial injustice or affect substantial rights.

### III. FILING AND MAINTAINING AN APPEAL

Every trial court decision that is a final judgment, subject to appeal, will result in a written order signed or initialed by the trial judge. Even a decision stated orally in court at the conclusion of the hearing will be indicated in a written order. The nature of those orders can vary anywhere from a brief entry with one or two boxes checked and the judge signing or initialing a court form, to a decision of 50 pages or more. Obtain a copy of the written order that constitutes the court’s final decision.

If you decide to appeal a decision of the trial court, it will be important to proceed carefully through the following steps:

**(1) Notice of Appeal and Filing Fee.** An appeal is begun by filing, **with the clerk’s office at the trial court**, a notice of appeal and transcript order form. M.R. App. P. 2(a)(1). A notice of appeal form may be obtained from the trial court clerk. The notice of appeal form and related information may also be obtained through the Maine Judicial Branch website, [www.courts.state.me.us](http://www.courts.state.me.us) or the HelpMELaw website, [www.helpmelaw.com](http://www.helpmelaw.com). For civil cases, the party filing the appeal must include a brief statement of the issues that the party intends to present in the appeal. M.R. App. P. 2(a)(2) & 5(b)(2)(A). No filing fee is required for criminal appeals. **A party filing a civil appeal must pay an appeal filing fee of \$120.** A party who cannot afford to pay the appeal filing fee may seek a waiver of the filing fee by filing an application for a fee waiver that is addressed by M.R. Civ. P. 91.

**(2) Time Limits. Appeals must be filed within 21 days after the judge’s order is entered in the docket.** M.R. App. P. 2(b)(2)(A) (Criminal); M.R. App. P. 2(b)(3) (Civil). [Extradition order appeals must be filed within 7 days. M.R. App. P. 2(b)(2)(B).] The entry of the order in the docket may occur on the date of the judge’s written or oral decision or shortly thereafter. An appeal is valid if it is filed any time after the court’s decision, even if it is filed before the date on which the decision is entered in the docket. M.R. App. P. 2(b)(1). However, an appeal will be dismissed and fail if it is filed more than 21 days after the final decision is entered in the docket. An extension of time to file an appeal may be granted, but only “upon a showing of good cause,” meaning a good excuse for the filing delay. A request to extend time to file the appeal must be presented to the trial court. M.R. App. P. 2(b)(5). The extension of time may not exceed 21 days from expiration of the original time limit, except in the rare case where the court clerk does not send out a notice of judgment.

**(3) Cross-Appeals.** When one party in a civil case files an appeal, any other party who wishes to argue for some change in the trial court decision must file a cross-appeal. M.R. App. P. 2(c)(3). A cross-appeal must be filed within the time for filing an appeal or within 14 days after the filing of the first notice of appeal, whichever happens last. M.R. App. P. 2(b)(3).

**(4) Transcript Preparation Request.** In criminal appeals, there is a standard transcript that will be prepared upon a request for a transcript with the filing of an appeal. It includes the testimony of the witnesses at trial, any bench conferences with the judge and, if the case was a jury trial, the judge’s

instructions to the jury. M.R. App. P. 5(b)(1). The parties to a criminal appeal may add to or remove portions from the standard transcript by utilizing the appropriate court form.

There is no standard transcript preparation request in a civil case. If the appeal challenges whether the court's fact-findings are supported by evidence in the record, a transcript of all or most of the trial proceedings is probably necessary to address these issues. M.R. App. P. 5(b)(2)(A). Where no transcript or an incomplete transcript is provided, the Law Court will assume that the record supports the fact-findings or discretionary choices made by the trial court.

After the transcript order is filed with the notice of appeal, the other parties to the appeal have 7 days to designate additional portions of the transcript to be ordered. M.R. App. P. 5(b)(1) & (2)(A). The party filing the appeal must make satisfactory arrangements with the court reporter or the electronic recording division of the courts to pay for the ordered transcript. Where payment arrangements are not made within 7 days, the transcript order will be canceled, and the appeal will proceed without a transcript. M.R. App. P. 5(b)(2)(B). Defendants in criminal cases and parties in civil child protective cases who qualify for court-appointed counsel, and who file the appropriate form to support qualification, may have the transcript on appeal paid as an expense of the court.

**(5) Copies of Documents to Other Parties.** Copies of the notice of appeal and transcript order form, the briefs, and all other documents filed with any court in connection with an appeal must be served on each other party to the appeal by mailing a copy to that party or to the lawyer for a party who is represented by a lawyer. M.R. Civ. P. 5(a); M.R. App. P. 7(c).

**(6) The Trial Court Record.** Within 21 days after the filing of the notice of appeal, the clerk of the trial court must file the record with the Clerk of the Law Court. M.R. App. P. 6(a). In practice, the trial court's record includes the original court file plus a copy of the docket entries. Generally the record will include trial exhibits that were documents or photographs, but, unless a special request is made, it will not include bulky documents or tangible objects that were exhibits such as voluminous reports, weapons, or clothing. M.R. App. P. 6(b).

Where an appeal to the Law Court involves a challenge to a trial court ruling deciding an appeal from a decision of a state or local administrative agency, the record will include the record from the state or local administrative proceeding that was presented to the trial court, plus the record created in the trial court.

**(7) The Law Court Briefing Schedule.** When the transcript is filed with the Law Court, or when the record is received if no transcript is ordered, the Clerk of the Law Court will send to each party to the appeal a notice stating the dates by which the briefs and the appendix must be filed. M.R. App. P. 7(a). This notice will have on it a Law Court docket number that will be different from any trial court docket number. Only the Law Court docket number should be used in all filings with the Law Court. The brief filing schedule set by M.R. App. P. 7(b) will be stated on the Law Court notice as follows:

**(A) The Appellant's Brief must be filed within 35 days** after the date that the record and transcript, if any, are filed in the Law Court.

**(B) The Appendix,** discussed below, must be filed within **14 days** after the appellant's brief is filed.

**(C) The Appellee's Brief must be filed within 28 days** after the appellant's brief is filed.

**(D)** The Appellant then may file a reply brief within 14 days after the filing of the brief of the appellee.

The date indicated on the notice from the Law Court controls the date that the Appellant's brief must be filed, **but the date that the Appellant's brief is filed controls the date when the Appendix and the Appellee's brief must be filed.** The case will be ready for consideration by the Law Court at any time more than 14 days after the Appellee's brief is due.

**(8) Preparing, Filing, and Contents of Briefs.** The brief is a written argument presented to the Law Court. For the Appellant it lists the errors claimed to have been committed by the trial court and argues why the challenged action of the trial court was in error and should result in reversal or modification of the trial court decision. The brief of the Appellee responds to the points raised by the Appellant and generally urges why the

decision of the trial court should be upheld. The rules for briefs appear in M.R. App. P. 9.

**A brief may not exceed 50 pages** without permission from the Law Court. While the 50-page limit indicates an outside limit, the great bulk of the briefs filed range in length from 8 to 25 pages, with small and about equal numbers coming in below and above that range. The Appellee's brief must follow the same form as the Appellant's brief, but it need not include a statement of the issues or the facts of the case, unless the Appellee wishes to state the issues or facts differently than stated by the Appellant.

An Appellant may file a reply brief strictly limited to addressing new arguments or issues raised in the Appellee's brief. A reply brief may not exceed 20 pages without prior approval of the Law Court. M.R. App. P. 9(c).

Briefs may rely on any source and cite any appropriate authority for the legal arguments made. However, briefs may not include claims about facts or documents about the facts of the case that are not part of the record that was considered by the trial court.

**(9) Form and Copies of Briefs.** Briefs may be reproduced by standard printing or by any copying process that can produce a clear black image on white paper. Printing must be on only **one side of each page**. Printed matter must appear in at least **12-point type**. Footnotes and quotations may appear in 11-point type. **The briefs must be presented on 8-1/2 x 11 inch paper with typed matter not exceeding 6-1/2 by 9 1/2 inches.** There must be **double spacing** between each line except for quotations. Briefs must be bound on the left-hand margin. M.R. App. P. 9(f).

The front cover of the brief must contain: (1) the name of the Supreme Judicial Court sitting as the Law Court and the Law Court docket number for the case; (2) the title of the case; (3) the nature of the proceeding before the Law Court (for example, Appeal; Report; Certification) and the name of the court or agency<sup>1</sup> from which the appeal is taken; (4) the title of the document (for example, Brief for Appellant); and (5) the name and address of the party or attorney filing the brief. The cover of the Appellant's brief must be blue; that of the Appellee, red; that of an Intervenor or Amicus Curiae, green; and

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<sup>1</sup> The Public Utilities Commission and the Workers' Compensation Board are the only agencies whose rulings may be appealed directly to the Law Court. M.R. App. P. 22 & 23.



that of any reply brief, gray. M.R. App. P. 9(f). An example of a front cover, in proper form, appears in Chapter 5 of this publication.

**(10) Copies. Ten copies** of each brief must be filed with the Clerk of the Law Court. Additionally, **two copies** of each brief must be mailed or otherwise provided to each of the other parties to the appeal who are separately appearing or separately represented. M.R. App. P. 7(c). Thus, if one attorney represents three other parties to the appeal, only two copies of a brief need to be served on that one attorney representing the three parties. However, if the same three parties are each represented by a separate attorney, or if they are each representing themselves, then two copies of a brief must be served on each one of the three parties or their attorneys.

**(11) The Appendix to the Briefs.** The appendix to the briefs includes copies of important documents from the trial court record to support consideration of the appeal. Except for child protective cases, the appellant is responsible for preparing and filing the appendix to the briefs. M.R. App. P. 8(a). **Eight copies** of the appendix must be filed no later than fourteen days before the date on which the appellee's brief is due to be filed. M.R. App. P. 8(b). If it is convenient for the parties, the appendix may be filed at an earlier time, for example, at the same time as the appellant's brief is filed. If the appendix consists of 20 pages or fewer, it may be bound with the appellant's brief and thus filed at the same time. M.R. App. P. 8(f). A longer appendix must be bound and filed separately.

Rule 8 includes time limits for advance communication by the parties to assure that the appendix includes the materials desired to be included by each party to the appeal. **M.R. App. P. 8(g) and (h) specify contents of the appendix that are mandatory for all appeals (subsection (g)), and contents that are mandatory for appeals of specific cases (subsection (h)).**

**(12) Process After Briefing.** The parties to the appeal will be notified if the appeal will be considered "on briefs" or if the parties will appear before the justices to present oral argument. If the appeal is to be considered for decision on the briefs alone, the justices of the Law Court will meet and discuss the appeal and the appropriate result. If the appeal is scheduled for oral argument, a specific date and time will be set for the parties to present oral argument regarding the issues in the appeal.

**(13) Oral Argument.** At oral argument, the parties are allowed to state their positions and then respond to questions from the justices. Each side is allotted up to 20 minutes for oral argument. M.R. App. P. 11(b). Many appellants divide their time, requesting approximately 15 minutes to present their opening argument and reserving up to 5 minutes for an opportunity for rebuttal argument after the appellee’s argument is presented. There is no rebuttal time for appellees.

**(14) Decision.** A decision in an appeal may be published any time from one day up to a year or more after it is discussed by the Law Court. However, most decisions are issued within three months of the date of the initial discussion. Most decisions, after stating the reasons for the action, end with one of two types of results:

(A) The Law Court may “affirm” the decision of the trial court, which means the Law Court does not find any grounds in the appeal that justify changing the trial court’s decision. A decision to affirm leaves the trial court decision unchanged.

(B) The Law Court may “vacate” the decision of the trial court in whole or in part. This means that the Court has found that the trial court erred in one or more respects and that the error was not harmless. In some cases when the Law Court vacates the decision of the trial court, the Law Court will specify what change should be made in the decision and “remand” the case to the trial court—which means return the case to the trial court—to make the particular change ordered by the Law Court.

Alternatively, the Court may vacate the result and remand to the trial court for a new trial, a new hearing, or further findings. In such a case, the ultimate result would be decided again by the trial court after further hearing or consideration.

Occasionally, the Law Court may issue another type of order to “dismiss” the appeal or, alternatively, order the underlying case dismissed.

**(15) Proceedings After Decision.** After the decision on an appeal, the Law Court issues a “mandate.” M.R. App. P. 14(a). When this mandate

issues, the case file is returned to the trial court. The trial court resumes authority over the case, either to enforce the terms of any judgment that was affirmed or to proceed as directed by the Law Court in the case of a judgment that was vacated.

In civil cases, the Law Court may also order that costs on the appeal must be paid to the prevailing party by the nonprevailing party. M.R. App. P. 13. Costs do not include attorney fees, but do include items such as the expense of reproducing briefs and the appendix, filing the appeal and other out-of-pocket expenses. Occasionally, where authorized by statute or where the Law Court determines that an appeal was frivolous, the Law Court may order payment of attorney fees or award a sum towards attorney fees on appeal. M.R. App. P. 13(f). Alternatively, and particularly in domestic relations cases, *see* 19-A M.R.S. § 901(6), the Law Court may direct the trial court to decide the appropriate amount of attorney fees, if any, on appeal.

#### IV. CONCLUSION

The above represents a general outline of the steps through which an appeal proceeds to the Law Court. The points discussed in this user's guide may be subject to modifications or exceptions not discussed here to keep this guide general and brief, but which may become significant in some appeals. Accordingly, the rules governing appeals should be reviewed carefully as any appeal is prepared and processed. Questions about appeals may be directed to the office of the Clerk of the Supreme Judicial Court.

#### V. DEFINITIONS

The following definitions may be helpful in understanding appellate practice:

*“Appellant”* is the party to the case who files an appeal from the trial court decision and, on appeal, seeks to change the result reached in the trial court.

*“Appellee”* is the party to the case who did not file an appeal and who, generally, supports keeping the trial court decision without change. An appellee may file a cross-appeal.

*“Brief”* is a written argument filed with the Law Court explaining and supporting a party's position on the appeal.

“*Cross-Appeal*” is an appeal filed by an appellee that seeks to change an action or result reached in the trial court and is filed in response to the original appeal by the appellant.

“*Defendant*” is the party against whom a civil suit or a criminal charge is filed in the trial court.

“*Docket*” is the chronological written record of events and orders in a case. Each action and order by the trial court and each filing by a party is recorded in the docket shortly after it occurs. The docket is kept by the trial court clerk and is separate from the court file. The docket is often kept in an electronic file.

“*Docket Entry*” is the individual written statement in the docket reflecting a particular court action or filing and the date of that event. The date of the event and the date of the docket entry may be different, and if so, both will be stated in the docket.

“*Docket Sheet*” is a paper on which docket entries for a specific case are printed or typed. Because many trial court docket files are kept electronically, docket sheets may not be available in trial court files. However, when a case is appealed, a current docket sheet will be printed and included with the case file sent to the Supreme Judicial Court.

“*Enter in the Docket*” means the act of writing a statement reflecting a particular court action into the docket as a docket entry. Most entries are completed by computer. **The date that a statement regarding an action is entered in the docket can be important, because that date may start the running of time limits to respond to or appeal from a particular trial court action.**

“*Intervenor*” is an individual or organization with a direct interest in a case who joins the case after it has begun and who is allowed to participate as a party by a trial court order pursuant to M.R. Civ. P. 24.

“*Judgment*” is an order or decision of the trial court that finally resolves or decides a case.

“*Law Court*” is the name commonly used to identify the Maine Supreme Judicial Court when the Court is considering appeals from decisions of the trial courts and administrative agencies. The term “Law Court” is not used to identify the Supreme Judicial Court when it acts in its

administrative and supervisory functions, other than considering and deciding appeals.

“*M.R. App. P.*” means the Maine Rules of Appellate Procedure.

“*M.R. Civ. P.*” means the Maine Rules of Civil Procedure.

“*M.R. Crim. P.*” means the Maine Rules of Criminal Procedure.

“*M.R. Evid.*” means the Maine Rules of Evidence.

“*M.R.S.*” means the Maine Revised Statutes. These are the general laws governing the State of Maine. They may be found in all law libraries and many larger public libraries. The Maine Revised Statutes may also be found on the State of Maine website. As an example of a citation to a Maine Statute, 14 M.R.S. § 1851 means the statute at issue can be found in the statute books or on line by looking for Title 14 and then section 1851. The Maine Revised Statutes are organized into 39 general categories or “titles.” Titles are subdivided into individual “sections.” Most titles also have an intermediate division into “chapters,” but chapter numbers are not included in citations to statutes.

“*M.R.S.A.*” means the Maine Revised Statutes Annotated. In addition to the general laws governing the State of Maine, the Maine Revised Statutes Annotated include a legislative history of amendments to each law and brief summaries, with citations, to any significant Court opinion that has interpreted or applied each law.

“*Party*” is a named individual or organization who (i) actually participates in a lawsuit before the trial court as a plaintiff, a defendant, or, occasionally, an intervenor, or (ii) participates in an appeal before the Law Court as an appellant or an appellee.

“*Plaintiff*” is the party who files a civil suit in the trial court asking for a particular result or relief. Generally, a plaintiff has the burden of proof, that is, it is the plaintiff’s burden to prove the claim being presented in the trial court.

“*Record*” includes the papers in the court file, the exhibits, and any testimony or other statements in court. A “record” on appeal includes the court papers, exhibits, and any transcript made of trial court proceedings that is submitted with the appeal. However, the trial court “record” includes all

papers and exhibits filed in the trial court, and all testimony and other statements made in court, whether a written transcript is prepared or not.

*“Transcript”* is a printed version of testimony or arguments and other proceedings which occurred in court. It is prepared by a court reporter or transcribed from a tape. **Transcripts generally are not prepared unless they are ordered and paid for by a person interested in the case.**

*“Trial Court”* is the court that hears or tries the action subject to the appeal. It may be the Superior Court, the District Court, or the Probate Court. The term also refers to any judge of the trial court.