

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

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1. Court submitting Rules for Approval:
Appeals Court
 2. Date Rules Submitted for Approval:
July 30, 2015
 3. Date Approved & Promulgated by the Supreme Judicial Court:
September 24, 2015
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendment to Appeals Court Standing Order Concerning
Petitions to the Single Justice Pursuant to G.L. c. 231,
§ 118 (First Paragraph), as attached.
 5. Effective Date:
October 1, 2015
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(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT
BOSTON 02108

SCOTT L. KAFKER
CHIEF JUSTICE

July 30, 2015

Honorable Robert J. Cordy
Chair,
SJC Rules Committee
Supreme Judicial Court John
Adams Courthouse Boston,
Massachusetts 02108

Re: Proposed Amendments to Appeals Court Standing Order Concerning Petitions to the Single Justice Pursuant to G.L. c. 231, § 118 (First Paragraph) to Include Petitions for Review of Impoundment Orders

Dear Justice Cordy:

The Justices of the Appeals Court request the Supreme Judicial Court approve amendments to the Appeals Court's Standing Order Concerning Petitions to the Single Justice Pursuant to G.L. c. 231, § 118 (First Paragraph). The Appeals Court requests the standing order be amended to include the format and filing of a petition for review of an impoundment order entered pursuant to Rule 12(a) of the recent amendments to Trial Court Rule VIII, Uniform Rules on Impoundment Procedure (U.R.I.P.), which becomes effective on October 1, 2015.

The amendments to the Appeals Court's standing order include revising the title and first sentence of paragraph (a) to add "or Rule 12(a) of the Uniform Rules on Impoundment Procedure" and by deleting the term "interlocutory" in paragraphs (a) and (b). In addition, the Appeals Court proposes that paragraph (1), Electronic Copy, be amended by requiring a duplicate of the supporting appendix be filed in PDF, and to explain the court's technical limitations on email capacity. The Appeals Court requests that these amendments be approved and become effective on October 1, 2015.

The Appeals Court published a notice to the public of the proposed amendments and invited comments in June 2015. No comments were received in response.

Attached are copies of the proposed amended standing order and the text of amended Rule 12 of the Uniform Rules on Impounded Procedure.

Your sincerely,



Scott L. Kafker,
Chief Justice

SLK/md

PROPOSED AMENDMENTS

Standing Order Concerning Petitions to the Single Justice Pursuant to G.L. c. 231, § 118 (First Paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure

(a) Contents of Petition for ~~Interlocutory~~ Relief; Form. A petition for ~~interlocutory~~-relief pursuant to G. L. c. 231, § 118 (first paragraph), or Rule 12(a) of the Uniform Rules on Impoundment Procedure, shall include, in the following order: (1) a request for ~~interlocutory~~ review, which shall state briefly the nature of the order or action of the trial court from which review is sought, the entry date of such order or action, and the name of the judge who entered it; (2) a statement of the issues of law raised by the petition; (3) a statement as to whether a party has filed, served, or intends to file a motion for reconsideration in the trial court; (4) a statement of the specific relief requested; and (5) an addendum containing a copy of the order or action of the trial court (a draft order for the single justice may be attached). References to the parties in the petition shall be by designation of the party in the trial court (e.g., "plaintiff," "defendant," "third-party defendant," etc.). The petition shall not exceed five pages of text compliant with Mass.R.A.P. 20[a][1]-[3] without leave of the court.

(b) Supporting Memorandum of Law and Record Appendix. The petition shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of the court has been obtained) in support of the petitioner's position, with citations to appropriate authorities and a statement addressing why ~~interlocutory~~ relief is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the petition. Relevant portions of the record shall be filed as a record appendix, and include a current copy of the trial court docket entries and all relevant papers filed in the trial court, including those filed by the other party or parties. The record appendix shall commence with a table of contents that lists each document contained therein. Only those pleadings, exhibits, and papers which were before the trial court when the order appealed from was entered, and which are necessary for an adjudication of the issues raised, may be submitted.

(c) Opposition; Form. Within seven days (ten days if the petitioner's certificate of service required under [d] hereof shows service by first-class mail) after the filing of the petition, or such other time as the court may direct, the other party or parties to the case may, but need not, file and serve an opposition thereto (not to exceed fifteen pages of text compliant with Mass.R.A.P. 20[a][1]-[3] unless leave of court has been obtained) setting forth reasons why the petition should not be granted. The opposition shall not restate matters contained in the petition unless the opposing party is dissatisfied with the statement thereof contained in the petition. The opposition may be accompanied by a supplemental record appendix containing such additional portions of the record as were before the trial court and are necessary for adjudication, and which the petitioner failed to include in its record appendix.

(d) Filing; Service. The petition, memorandum, record appendix, and any subsequently filed opposition and supplemental record appendix, shall be filed in the office of the Clerk of the Appeals Court with a certificate of service on all other parties in the case, including the service and filing of a copy in the appropriate trial court clerk's office from which the matter arose. No additional paper copies of the petition or opposition are required to be filed in the Appeals Court. The certificate of service shall set forth the name, address, and telephone number of counsel or other persons upon whom service has been made, and specify the date and manner of service. The certificate of service shall identify the name of each party represented by counsel and specify the counsel who represents each party.

Service may be personal or by first class mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by first class mail is complete on mailing.

(e) Impounded or confidential information. In any case in which the trial court entered an order impounding, sealing, or excluding from public access all or any portion of the trial court records, or there is material or information in a party's petition, addendum, opposition, or any appendix that is automatically impounded or deemed confidential by statute or court rule, the parties shall comply with Mass.R.A.P. 16(d), 16(m), and 18(g). If the trial court record includes any items listed as "personal identifying data" in the Supreme Judicial Court's Interim Guidelines on Personal Identifying Data, the parties shall comply with the guidelines in all filings to the Appeals Court.

(f) Electronic Copy. When a party represented by counsel files a petition or opposition thereto, including any supporting memorandum of law, the filer shall, in addition to the paper copy, simultaneously provide the court with a searchable PDF (portable document format) copy of the petition or opposition, and supporting memoranda of law, and record appendix either (i) on a CD-ROM, or (ii) by an email, to which the PDF copies are y-is attached, sent to: emotions@appct.state.ma.us. A PDF copy of the record appendix may be filed if feasible to produce. The court's email will not accept a PDF that exceeds 10 megabytes; any such PDF shall be submitted on a CD.

The CD-ROM and electronic copy and email filing requirements are waived for self-represented litigants.

(g) Hearing. The single justice has discretion to determine whether a hearing shall be held.

**Excerpt from the 2015 Amended Uniform Rules on Impoundment Procedure
(effective October 1, 2015)**

Rule 12. Appellate Review

(a). Review of Orders Entered in Ongoing Proceedings. A party or interested nonparty aggrieved by an order impounding or refusing to impound material, or vacating, modifying, or refusing to modify a prior order of impoundment in an ongoing proceeding, may enter in the Appeals Court, within thirty days of the entry of such order, a petition for review by the single justice. The single justice's review shall proceed in accordance with the law and procedures governing petitions to the single justice.

(b). Review of Orders Entered in Proceedings Which Have Concluded. Upon the entry of judgment, including in an action commenced pursuant to URIP Rule 6(b), or other final disposition of the proceeding, any appeal of an impoundment order proceeds pursuant to the Massachusetts Rules of Appellate Procedure.

(c). Notice to the Clerk. In any matter entered or pending in an appellate court, the filer of any document shall provide written notice to the clerk of the appellate court of any document that contains impounded information. Such notification shall accompany the document and specify those papers, documents, or exhibits, or portions thereof, that are impounded and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. Unless otherwise ordered, material impounded in the Trial Court shall remain impounded in the appellate court.