

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

- 
1. Court Submitting Rules for Approval:

Appeals Court

2. Date Rules Submitted for Approval:

February 1, 2019

3. Date Approved & Promulgated by the Supreme Judicial Court:

March 27, 2019

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Technical Amendments to the following Appeals Court Standing Orders: Standing Order Concerning Petitions to the Single Justice Pursuant to G.L. c. 231, sec. 118 (first paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure; Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R.A.P. 6; Standing Order Concerning the Dismissal of Appeals and Reports in All Cases for Lack of Prosecution; and Standing Order Concerning Electronic Filing; and Repeal of Appeals Court Standing Order Concerning Conferences in Civil Appeals, all as attached hereto.

5. Effective Date:

May 1, 2019

(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, MASSACHUSETTS 02108

MARK V. GREEN  
CHIEF JUSTICE

February 1, 2019

Honorable Frank M. Gaziano  
Chair, Supreme Judicial Court Rules Committee  
Supreme Judicial Court  
John Adams Courthouse  
Boston, Massachusetts 02108

Re: Proposed Technical Amendments to Appeals Court Standing Orders and Repeal of the Appeals Court Standing Order Concerning Conferences in Civil Appeals

Dear Justice Gaziano:

The Justices of the Appeals Court request the Supreme Judicial Court approve amendments to several of the Appeals Court's Standing Orders ("Standing Orders") and repeal of the Appeals Court Standing Order Concerning Conferences in Civil Appeals.

The affected Standing Orders are as follows:

1. Standing Order Concerning Petitions to the Single Justice Pursuant to G. L. c. 231, sec. 118 (first paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure;
2. Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R.A.P. 6;
3. Standing Order Concerning the Dismissal of Appeals and Reports in All Cases for Lack of Prosecution;
4. Standing Order Concerning Electronic Filing; and
5. Standing Order Concerning Conferences in Civil Appeals.

The amendments are proposed in response to extensive changes to the Massachusetts Rules of Appellate Procedure ("Appellate Rules") approved by the Supreme Judicial Court, which become effective March 1, 2019. The amendments update citations in the Standing Orders in instances where the cited Appellate Rule was either relocated or divided into separate subparagraphs. This is necessary because relevant provisions in the Appellate Rules have been relocated or newly divided rendering the current citations in the Standing Orders inaccurate or overbroad.

The amendments also add the option for filers to format their single justice petitions, motions, memoranda of law, and responses, using a proportional font (e.g., Times New Roman) and a word count limit as alternative to a monospaced font (e.g., Courier New) and a page limit, mirroring the changes in the Appellate Rules. This will promote formatting consistency between the Appeals Court's two dockets.


Finally, the amendments repeal the Appeals Court Standing Order Concerning Conferences in Civil Appeals. The Court's conference program was discontinued for budgetary reasons in 2002. Repeal of this Standing Order will reduce confusion and eliminate the occasional, incorrect expectation that a conference will be scheduled. If and when the Appeals Court initiates a new conference program, a new Standing Order can be drafted to meet the needs of the new program.

The Appeals Court published these proposed amendments for public review and comment. No comments were received.

The Appeals Court requests that these amendments be approved and become effective on March 1, 2019. If approved, the Appeals Court would post an announcement of the amendments with a link to the amended Standing Orders to its website and to its listserv.

I sincerely appreciate your attention to these proposed amendments.

Yours sincerely,



Mark V. Green  
Chief Justice



# Proposed Technical Amendments to Appeals Court Standing Orders and Repeal of the Appeals Court Standing Order Concerning Conferences in Civil Appeals

February 1, 2019

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## KEY TO REPORTER'S CONVENTIONS

Original language = regular typeface

~~Strikethrough~~ = removed

**Bold** = addition to rule



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

**Strikethrough Version**

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

(a) Contents of Petition for Relief; Form. A petition for 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 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 **in monospaced font or 1,000 words in proportional font** compliant with Mass. R.A.P. 20~~[a][1]-[3]~~(a)(4)(A)-(C) 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 **in monospaced font or 3,500 words in proportional font** compliant with Mass. R.A.P. 20~~[a][1]-[3]~~[a][4][A]-[C] 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 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 be consecutively numbered starting with the cover or first page as page 1 followed by a table of contents that lists each document contained therein and the page on which it appears. 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) ~~Response-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 ~~response-opposition~~ thereto (not to exceed fifteen pages of text in **monospaced font or 3,500 words in proportional font** compliant with Mass. R.A.P. 20[~~a~~][~~1~~]-[3]-[a][4][A]-[C] unless leave of court has been obtained) setting forth reasons why the petition should **or should** not be granted. The ~~response-opposition~~ shall not restate matters contained in the petition unless the **responding-opposing** party is dissatisfied with the statement thereof contained in the petition. The ~~response-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; **Required Certificate(s)**. The petition, memorandum, record appendix, and any subsequently filed ~~opposition-response~~ and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include 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. The certificate of service shall set forth the name, address, email 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, by first class mail, or electronically with the consent of the person served. 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. Registration for and use of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

**If a petition and supporting memorandum of law or a response is produced in a proportional font, an additional certificate of compliance with the length limit(s) is required and must include the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used.**

(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, ~~response-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-d~~). The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

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

### Clean Version

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

(a) Contents of Petition for Relief; Form. A petition for 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 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 in monospaced font or 1,000 words in proportional font compliant with Mass. R.A.P. 20(a)(4)(A)-(C) 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 in monospaced font or 3,500 words in proportional font compliant with Mass. R.A.P. 20[a][4][A]-[C] 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 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 be consecutively numbered starting with the cover or first page as page 1 followed by a table of contents that lists each document contained therein and the page on which it appears. 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) Response; 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 a response thereto (not to exceed fifteen pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R.A.P. 20[a][4][A]-[C] unless leave of court has been obtained) setting forth reasons why the petition should or should not be granted. The response shall not restate matters contained in the petition unless the responding party is dissatisfied with the statement thereof contained in the petition. The response 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; Required Certificate(s). The petition, memorandum, record appendix, and any subsequently filed response and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include 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. The certificate of service shall set forth the name, address, email 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, by first class mail, or electronically with the consent of the person served. 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. Registration for and use of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

If a petition and supporting memorandum of law or a response is produced in a proportional font, an additional certificate of compliance with the length limit(s) is required and must include the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used.

(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, response, 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(d). The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

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

**Standing Order concerning Motions to Stay a Judgment or Execution of Sentence Pursuant to Mass. R.A.P. 6**

**Strikethrough Version**

**Standing Order concerning Motions to Stay a Judgment or Execution of Sentence Pursuant to Mass. R.A.P. 6**

(a) Contents of a Motion for a Stay; Form. A motion for a stay pursuant to Mass. R.A.P. 6 shall include in the following order:

- (1) a request for a stay, which shall state briefly the nature of the judgment or sentence entered by the trial court for which a stay is sought, the entry date of such judgment or conviction, and the name of the judge who entered it;
- (2) the text of the order and rationale of the trial court denying the motion for stay or, if no such motion was filed in the trial court, a showing why filing the motion in the trial court was not practicable;
- (3) a statement of the issues of law raised by the motion;
- (4) a statement of the specific relief requested; and
- (5) an addendum containing copies of the judgment, notice of appeal, and the trial court's order denying the prior motion for a stay.

References to the parties in the motion shall be by the designation of the party in the trial court. The motion shall not exceed five pages of text in **monospaced font or 1,000 words in proportional font** compliant with Mass. R.A.P. 20[a][1]-[3](a)(4)(A)-(C) without leave of the court.

(b) Supporting Memorandum of Law and Record Appendix. The motion shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text in **monospaced font or 3,500 words in proportional font** compliant with Mass. R.A.P. 20[a][1]-[3][a][4][A]-[C] unless leave of the court has been obtained) in support of the movant's position, with citations to appropriate authorities and a statement addressing why a stay is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the motion. 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 be consecutively numbered starting with the cover or first page as page 1 followed by a table of contents that lists each document contained therein and the page on which it appears.

(c) ~~Response~~**Opposition**, Form. The non-moving party or parties to the case may, but need not, file and serve an ~~response-opposition~~ thereto (not to exceed fifteen pages of text in **monospaced font or 3,500 words in proportional font** compliant with Mass. R.A.P. 20[a][1]-[3][a][4][A]-[C] unless leave of court has been obtained) setting forth reasons why the motion should or



should not be granted. The ~~response-opposition~~ shall not restate matters contained in the motion unless the ~~responding-opposing~~ party is dissatisfied with the statement thereof contained in the motion. The ~~response-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 movant failed to include in its record appendix.

(d) ~~Response-Opposition~~, Timing.

(1) For motions filed in all civil matters and for criminal matters entered in the Appeals Court's single justice session (i.e., prior to the entry of an appeal pursuant to Mass. R.A.P. 10[a][1] or [2]), the other party or parties to the case may, but need not, file and serve an ~~response-opposition~~ thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(2) For motions filed in criminal appeals subsequent to the entry of and during the pendency of a direct or collateral appeal in the Appeals Court, the time limit for a response is governed by the provisions of Mass. R.A.P. 6(b)(2)(B)-(C).

(3) For motions filed in civil appeals entered pursuant to Mass. R.A.P. 10{(a)}(1) the other party or parties to the case may, but need not, file and serve an ~~response-opposition~~ thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(e) Filing; Service; **Required Certificate(s)**. The motion, memorandum, record appendix, and any subsequently filed ~~response-opposition~~ and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include 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. The certificate of service shall set forth the name, address, email 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, by first class mail, or electronically with the consent of the person served. 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. Registration for and use

of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

**If a petition and supporting memorandum of law or a response is produced in a proportional font, an additional certificate of compliance with the length limit(s) is required and must include the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used.**

(f) 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 motion, addendum, memorandum, 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-d). See G. L. c. 265, § 24C. The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

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

### **Clean Version**

Standing Order concerning Motions to Stay a Judgment or Execution of Sentence Pursuant to Mass. R.A.P. 6

(a) Contents of a Motion for a Stay; Form. A motion for a stay pursuant to Mass. R.A.P. 6 shall include in the following order:

- (1) a request for a stay, which shall state briefly the nature of the judgment or sentence entered by the trial court for which a stay is sought, the entry date of such judgment or conviction, and the name of the judge who entered it;
- (2) the text of the order and rationale of the trial court denying the motion for stay or, if no such motion was filed in the trial court, a showing why filing the motion in the trial court was not practicable;
- (3) a statement of the issues of law raised by the motion;
- (4) a statement of the specific relief requested; and
- (5) an addendum containing copies of the judgment, notice of appeal, and the trial court's order denying the prior motion for a stay.

References to the parties in the motion shall be by the designation of the party in the trial court. The motion shall not exceed five pages of text in monospaced font or 1,000 words in proportional font compliant with Mass. R.A.P. 20(a)(4)(A)-(C) without leave of the court.



(b) Supporting Memorandum of Law and Record Appendix. The motion shall, unless otherwise ordered, be accompanied by a memorandum of law (not to exceed fifteen pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R.A.P. 20[a][4][A]-[C] unless leave of the court has been obtained) in support of the movant's position, with citations to appropriate authorities and a statement addressing why a stay is appropriate. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the motion. 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 be consecutively numbered starting with the cover or first page as page 1 followed by a table of contents that lists each document contained therein and the page on which it appears.

(c) Response, Form. The non-moving party or parties to the case may, but need not, file and serve a response thereto (not to exceed fifteen pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R.A.P. 20[a][4][A]-[C] unless leave of court has been obtained) setting forth reasons why the motion should or should not be granted. The response shall not restate matters contained in the motion unless the responding party is dissatisfied with the statement thereof contained in the motion. The response 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 movant failed to include in its record appendix.

(d) Response, Timing.

(1) For motions filed in all civil matters and for criminal matters entered in the Appeals Court's single justice session (i.e., prior to the entry of an appeal pursuant to Mass. R.A.P. 10[a][1] or [2]), the other party or parties to the case may, but need not, file and serve a response thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(2) For motions filed in criminal appeals subsequent to the entry of and during the pendency of a direct or collateral appeal in the Appeals Court, the time limit for a response is governed by the provisions of Mass. R.A.P. 6(b)(2)(B)-(C).

(3) For motions filed in civil appeals entered pursuant to Mass. R.A.P. 10(a)(1) the other party or parties to the case may, but need not, file and serve a response thereto within seven days after the service of the motion (ten days if the movant's certificate of service required under [e] hereof shows service by first-class mail), or such other time as the court may direct.

(e) Filing; Service; Required Certificate(s). The motion, memorandum, record appendix, and any subsequently filed response and supplemental record appendix, shall be filed electronically if the filing party is represented by counsel. Self-represented litigants may file electronically, or may file a single paper original or duplicate in the office of the Clerk of the Appeals Court. Any document required to be e-filed may be filed on paper upon allowance of a motion to waive the



e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause.

Whether filed electronically or on paper, all filings shall include 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. The certificate of service shall set forth the name, address, email 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, by first class mail, or electronically with the consent of the person served. 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. Registration for and use of the electronic filing system constitutes consent to electronic service, and such service is complete upon e-filing.

If a petition and supporting memorandum of law or a response is produced in a proportional font, an additional certificate of compliance with the length limit(s) is required and must include the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used.

(f) 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 motion, addendum, memorandum, 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(d). See G. L. c. 265, § 24C. The parties shall comply with Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents in all filings to the Appeals Court.

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

## Standing Order concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution

### Strikethrough Version

#### Standing Order concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution

~~It is ORDERED that w~~Whenever the clerk of this court (clerk) shall not have received the brief and appendix of an appellant (including in that term a party treated as an appellant under Rule 5 of the Massachusetts Rules of Appellate Procedure [Rules]) within the time required or permitted by Rules 13(a), 18(a)(f) and 19(a)(1), 19(b)(1), or 19(b)(2) (unless said time shall previously have been enlarged or unless, in the case of an appendix, the filing shall have been deferred or dispensed with under Rule 18[e] or [f]), the clerk shall send a copy of this **standing order** by ~~first class mail~~ to the attorney of record for such appellant (and to such appellant at ~~his~~ the last known address in a criminal case or if **such appellant** ~~he~~ is not represented by ~~such~~ an attorney in a civil case) and to all other parties or to their attorneys of record, together with notice in writing that the appeal of such appellant or the report, as the case may be, will be dismissed as to **that appellant** ~~him~~ for lack of prosecution unless, within fourteen days of the date of such notice in a civil case or within thirty days of the date of such notice in a criminal case, the clerk shall receive (a) a motion by such appellant to enlarge to a date certain set forth therein the time for serving and filing such brief and appendix and (b) an affidavit of such appellant (or **that appellant's** ~~his~~ attorney) which shall set forth all the facts which such appellant wishes to have considered by the single justice of this court, who will act on such motion in accordance with the provisions of Rule 15(b) and (c). If no such motion and affidavit are received by the clerk within such period, the clerk shall forthwith dismiss such appeal or report for lack of prosecution and shall note such dismissal on the docket. The clerk shall take like action whenever a particular appellant has failed to serve and file ~~a~~ **his** brief or appendix (when an appendix is required) within an enlargement of time previously granted. The sending of every notice required by this order shall be noted on the docket. Unless a dismissal shall have been vacated by a single justice within fourteen days from the docketing thereof, the clerk shall notify the clerk of the trial court that the appeal or report has been dismissed as to the particular appellant for lack of prosecution. A dismissal of an appeal in a criminal case may be vacated by a panel of the justices after the expiration of said fourteen days upon a showing either (a) of the existence of a meritorious case or (b) that the defendant was deprived of ~~the~~ **his** right of direct appeal as a result of an act or omission of counsel after the appeal had been entered in this court.

### Clean Version

#### Standing Order concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution



Whenever the clerk of this court (clerk) shall not have received the brief and appendix of an appellant (including in that term a party treated as an appellant under Rule 5 of the Massachusetts Rules of Appellate Procedure [Rules]) within the time required or permitted by Rules 13(a), 18(f) and 19(a)(1), 19(b)(1), or 19(b)(2) (unless said time shall previously have been enlarged), the clerk shall send a copy of this standing order to the attorney of record for such appellant (and to such appellant at the last known address in a criminal case or if such appellant is not represented by an attorney in a civil case) and to all other parties or to their attorneys of record, together with notice in writing that the appeal of such appellant or the report, as the case may be, will be dismissed as to that appellant for lack of prosecution unless, within fourteen days of the date of such notice in a civil case or within thirty days of the date of such notice in a criminal case, the clerk shall receive (a) a motion by such appellant to enlarge to a date certain set forth therein the time for serving and filing such brief and appendix and (b) an affidavit of such appellant (or that appellant's attorney) which shall set forth all the facts which such appellant wishes to have considered by the single justice of this court, who will act on such motion in accordance with the provisions of Rule 15(b) and (c). If no such motion and affidavit are received by the clerk within such period, the clerk shall forthwith dismiss such appeal or report for lack of prosecution and shall note such dismissal on the docket. The clerk shall take like action whenever a particular appellant has failed to serve and file a brief or appendix (when an appendix is required) within an enlargement of time previously granted. The sending of every notice required by this order shall be noted on the docket. Unless a dismissal shall have been vacated by a single justice within fourteen days from the docketing thereof, the clerk shall notify the clerk of the trial court that the appeal or report has been dismissed as to the particular appellant for lack of prosecution. A dismissal of an appeal in a criminal case may be vacated by a panel of the justices after the expiration of said fourteen days upon a showing either (a) of the existence of a meritorious case or (b) that the defendant was deprived of the right of direct appeal as a result of an act or omission of counsel after the appeal had been entered in this court.



## Standing Order Concerning Electronic Filing

### Strikethrough Version

#### Standing Order Concerning Electronic Filing

Consistent with Rule 1 of S.J.C. Rule 1:25, Massachusetts Rules of Electronic Filing (“E-Filing Rules”), the Appeals Court hereby adopts this standing order concerning its electronic filing program.

##### A. Governing Rules and Orders.

1. Filers who submit documents electronically through the e-filing service provider (“Provider”), on the Massachusetts Court System Odyssey File and Serve Site (“EfileMA.com”) shall comply with the E-Filing Rules,<sup>1</sup> the Massachusetts Rules of Appellate Procedure, the Appeals Court electronic filing format requirements found on the Appeals Court website,<sup>2</sup> and all other applicable Appeals Court rules and standing orders.
2. To the extent that any court rule or standing order is inconsistent with this Order concerning electronic filing in the Appeals Court, the E-Filing Rules, or the Appeals Court electronic filing format requirements found on the Appeals Court website, then **the E-Filing Rules**, this Order, ~~the E-Filing Rules~~, and the Appeals Court electronic filing format requirements shall control.

B. Mandatory Attorney Registration for Electronic Filing and Service. All law firms and attorneys with cases pending in the Appeals Court shall register for electronic filing at eFileMA.com. Registration shall not constitute a notice of appearance in any particular case. Attorney registrants are required to use their business email address on file with the Board of Bar Overseers and to maintain their name and business email address on the eFileMA.com “Public List.” If such email address is different from the email address previously registered with the Appeals Court for receipt of electronic court notices, the filer shall file a change of email address with the Appeals Court.

C. Mandatory Attorney Electronic Filing. Except as provided in Section E(l) (which provides there is no requirement to e-file an impounded document), the following documents filed by an attorney representing a party to a case shall be filed electronically using eFileMA.com. Use of the eFileMA.com system constitutes “e-filed” as used herein. The Appeals Court designates each case docket as either: (i) “public” meaning all data and documents are publicly accessible; (ii), “partially impounded,” meaning some information or documents are publicly accessible and

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<sup>1</sup> See <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-125-massachusetts-rules-of-electronic>

<sup>2</sup> See ~~<https://www.mass.gov/electronic-filing-at-the-appeals-court-0>~~  
<https://www.mass.gov/guides/electronic-filing-at-the-appeals-court>

other data or document(s) are not publicly accessible; or, (iii) "impounded," meaning no case information or records are publicly accessible.

1. All filings in criminal panel cases. All documents in public and partially impounded criminal panel cases (on the court's "P" docket) must be e-filed.
2. Briefs and appendices in civil panel cases. All briefs and appendices in public and partially impounded civil panel cases (on the court's "P" docket) must be e-filed.
3. All docketing statements. All docketing statements, in public and partially impounded civil and criminal panel cases, must be e-filed pursuant to the Appeals Court Standing Order Concerning Docketing Statements for All Appeals (Civil and Criminal). Filers may request a waiver of the Provider convenience fee using a waiver account.
4. All motions and letters filed after panel assignment. After the Appeals Court assigns a case to a panel of justices for consideration on the merits, either with or without oral argument, all subsequent filings in the case must be e-filed. This requirement applies in all public and partially impounded civil and criminal panel cases. Filers may request a waiver of the Provider convenience fee using a waiver account.
5. All filings on the Single Justice docket. All documents in public and partially impounded single justice cases (on the court's "J" docket) must be e-filed.

Except upon motion and order as provided in paragraph F, the Court may decline to docket any of the foregoing documents submitted on paper.

#### D. Voluntary Electronic Filing by Attorneys and Self-Represented Litigants.

1. Voluntary e-filing. Any document that is not identified as mandatory in paragraph C may nonetheless be e-filed voluntarily by the attorney or party. The Appeals Court encourages all attorneys and self-represented litigants in public, partially impounded, and impounded cases, to e-file every document submitted to the court.
2. Self-represented litigants. Self-represented litigants may register for electronic filing at eFileMA.com.
3. Public Access Scanner and Terminal. A public access computer terminal and scanner are located in the Clerk's Office of the Appeals Court, which may be used by any party to e-file a paper document without payment of the Provider convenience fee.

#### E. Electronic Filing of Impounded Documents.

1. Voluntary e-filing. Impounded documents may be e-filed through EfileMA.com, but there is no requirement to e-file an impounded document.
2. Marking impounded documents. Prior to e-filing, the filer shall mark any impounded document as impounded on the cover or first page of the document, as by E-Filing Rule 11, Mass. R. App. P. 16(m) and 18(g-d).



3. Designation of impounded documents on EfileMA.com. The filer shall also designate the document as impounded using the appropriate field on EfileMA.com, which shall satisfy the requirement of providing written notice to the clerk of a document's impounded status. Impounded documents may otherwise be e-filed in the same manner as non-impounded documents.

4. Confidentiality. The confidentiality of an electronic record or an electronic or paper copy thereof is equivalent to that of a paper record. Access may be permitted only to the extent provided by law. E-notices from the eFileMA.com system containing hyperlinks to impounded documents shall be treated as confidential.

F. Waiver of Mandatory Electronic Filing and Permission to File Paper Original and Copies. Any document required to be e-filed under paragraph C may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause. ~~For any brief or appendix filed on paper, it is hereby ordered pursuant to Mass. R. App. P. 2 that the rules pertaining to the form and number of briefs and record appendices required to be filed are suspended as follows:~~

~~1. Copies of briefs and appendices. Notwithstanding the requirement in Mass. R. App. P. 18(a) and 19(b)(1) that 7 copies be filed, hereafter only 4 copies of each brief and each record appendix shall be filed with the Clerk, unless the Court or a single justice by order in a particular case shall direct a different number, and 2 copies of each shall continue to be served on counsel for each party separately represented.~~

~~2. Copies of exhibit and transcript volumes. Notwithstanding the requirement in Mass. R. App. P. 18(e) that in civil cases 5 copies of exhibits volumes and 2 copies of transcript volumes may be filed, hereafter only 2 copies of each exhibit volume and 1 copy of each transcript volume shall be filed with the appendix, and 1 copy of each exhibit and transcript volume shall continue to be served on counsel for each party separately represented.~~

~~3. Inmate filings. For self-represented litigants who are confined in an institution, the requirement of Mass. R. App. P. 20(a)(6)(A) that a paper brief must have a color cover is suspended and no color cover is required. Pursuant to paragraph F(1), only 4 paper copies need be filed.~~

G. Format. All e-filed documents shall comply with the formatting requirements of the Massachusetts Rules of Appellate Procedure except as modified by the Appeals Court's electronic filing format requirements found on the Appeals Court website. See generally E-Filing Rule 1.

H. No Paper Duplicates. All documents that are e-filed shall be submitted electronically only. Neither a paper original nor duplicate shall be filed unless specifically requested by the Court.

I. Electronic Service of E-Filed Documents.

1. Service of Documents E-Filed in the Appeals Court. Pursuant to E-Filing Rule 3(d), the filer's registration with EfileMA.com constitutes consent to receive electronic service in all cases. All documents submitted electronically through EfileMA.com may be electronically served through EfileMA.com pursuant to E-Filing Rule 7 and such service shall be considered compliant with Mass. R. App. P. 13, provided the other party or party's attorney has registered with EfileMA.com. Registered filers must maintain their name and email address on the eFileMA.com "Public List." If a party's representative has not registered with EfileMA.com, service should be made by the conventional methods (e.g., paper copies and regular mail).

2. No Copies of Applications, Responses, or Oppositions Filed in the Supreme Judicial Court. A party is not required to file or serve a copy in the Appeals Court of any application, response, or opposition that is filed in the Supreme Judicial Court Pursuant to Mass. R. App. P. 11 and 27.1.

J. Mandatory Electronic Notice.

1. Notice from Provider. The eFileMA.com system will transmit electronic notifications (i) when an e-filed document is submitted, (ii) when the Clerk's Office accepts or rejects the document, and (iii) possibly at other times during an e-filing transaction.

2. Notice from the Appeals Court. All attorneys will receive electronic notifications in lieu of paper notices of the court's actions, orders, judgments, rescripts, and decisions. The Court will use the business email addresses on file with the Board of Bar Overseers pursuant to S.J.C. Rule 4:02(11). Attorneys must ensure that their business email address registered with the Board of Bar Overseers is up to date. A self-represented litigant may authorize the Court to send electronic notice in lieu of paper notices.

K. Support. All technical support shall be provided by Provider. The Appeals Court's Clerk's Office may be contacted with procedural questions or with questions regarding the application of this Order.

L. Cessation of Appeals Court's "emotions" email filings. The Appeals Court will no longer accept emails and PDFs of filings at its "emotions@appct.state.ma.us" address. All electronic filings shall be submitted via the eFileMA.com system.

M. Prior Orders Rescinded. The following prior orders of the Appeals Court are hereby rescinded by this Order and no longer in effect:

1. Appeals Court Order Concerning Electronic Filing Pilot Project, adopted March 30, 2016.
2. Appeals Court Order Concerning Number of Copies of Brief and Record Appendix to be Filed, adopted July 29, 2016.
3. Appeals Court Standing Order Requiring the Electronic Filing of All Motions and Letters Filed After Panel Assignment, adopted May 1, 2010, and amended June 1, 2011.



N. Future Changes and Updates. This order may be superseded or amended, in writing, at any time.

O. Effective Date. This Order shall become effective on September 1, 2018.

### **Clean Version**

#### **Standing Order Concerning Electronic Filing**

Consistent with Rule 1 of S.J.C. Rule 1:25, Massachusetts Rules of Electronic Filing (“E-Filing Rules”), the Appeals Court hereby adopts this standing order concerning its electronic filing program.

##### **A. Governing Rules and Orders.**

1. Filers who submit documents electronically through the e-filing service provider (“Provider”), on the Massachusetts Court System Odyssey File and Serve Site (“EfileMA.com”) shall comply with the E-Filing Rules,<sup>1</sup> the Massachusetts Rules of Appellate Procedure, the Appeals Court electronic filing format requirements found on the Appeals Court website,<sup>2</sup> and all other applicable Appeals Court rules and standing orders.
2. To the extent that any court rule or standing order is inconsistent with this Order concerning electronic filing in the Appeals Court, the E-Filing Rules, or the Appeals Court electronic filing format requirements found on the Appeals Court website, then the E-Filing Rules, this Order, and the Appeals Court electronic filing format requirements shall control.

B. Mandatory Attorney Registration for Electronic Filing and Service. All law firms and attorneys with cases pending in the Appeals Court shall register for electronic filing at eFileMA.com. Registration shall not constitute a notice of appearance in any particular case. Attorney registrants are required to use their business email address on file with the Board of Bar Overseers and to maintain their name and business email address on the eFileMA.com “Public List.” If such email address is different from the email address previously registered with the Appeals Court for receipt of electronic court notices, the filer shall file a change of email address with the Appeals Court.

C. Mandatory Attorney Electronic Filing. Except as provided in Section E(l) (which provides there is no requirement to e-file an impounded document), the following documents filed by an attorney representing a party to a case shall be filed electronically using eFileMA.com. Use of the eFileMA.com system constitutes “e-filed” as used herein. The Appeals Court designates each

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<sup>1</sup> See <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-125-massachusetts-rules-of-electronic>

<sup>2</sup> See <https://www.mass.gov/guides/electronic-filing-at-the-appeals-court>

case docket as either: (i) "public" meaning all data and documents are publicly accessible; (ii), "partially impounded," meaning some information or documents are publicly accessible and other data or document(s) are not publicly accessible; or, (iii) "impounded," meaning no case information or records are publicly accessible.

1. All filings in criminal panel cases. All documents in public and partially impounded criminal panel cases (on the court's "P" docket) must be e-filed.
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3. All docketing statements. All docketing statements, in public and partially impounded civil and criminal panel cases, must be e-filed pursuant to the Appeals Court Standing Order Concerning Docketing Statements for All Appeals (Civil and Criminal). Filers may request a waiver of the Provider convenience fee using a waiver account.
4. All motions and letters filed after panel assignment. After the Appeals Court assigns a case to a panel of justices for consideration on the merits, either with or without oral argument, all subsequent filings in the case must be e-filed. This requirement applies in all public and partially impounded civil and criminal panel cases. Filers may request a waiver of the Provider convenience fee using a waiver account.
5. All filings on the Single Justice docket. All documents in public and partially impounded single justice cases (on the court's "J" docket) must be e-filed.

Except upon motion and order as provided in paragraph F, the Court may decline to docket any of the foregoing documents submitted on paper.

#### D. Voluntary Electronic Filing by Attorneys and Self-Represented Litigants.

1. Voluntary e-filing. Any document that is not identified as mandatory in paragraph C may nonetheless be e-filed voluntarily by the attorney or party. The Appeals Court encourages all attorneys and self-represented litigants in public, partially impounded, and impounded cases, to e-file every document submitted to the court.
2. Self-represented litigants. Self-represented litigants may register for electronic filing at eFileMA.com.
3. Public Access Scanner and Terminal. A public access computer terminal and scanner are located in the Clerk's Office of the Appeals Court, which may be used by any party to e-file a paper document without payment of the Provider convenience fee.

#### E. Electronic Filing of Impounded Documents.

1. Voluntary e-filing. Impounded documents may be e-filed through EfileMA.com, but there is no requirement to e-file an impounded document.



2. Marking impounded documents. Prior to e-filing, the filer shall mark any impounded document as impounded on the cover or first page of the document, as by E-Filing Rule 11, Mass. R. App. P. 16(m) and 18(d).

3. Designation of impounded documents on EfileMA.com. The filer shall also designate the document as impounded using the appropriate field on EfileMA.com, which shall satisfy the requirement of providing written notice to the clerk of a document's impounded status. Impounded documents may otherwise be e-filed in the same manner as non-impounded documents.

4. Confidentiality. The confidentiality of an electronic record or an electronic or paper copy thereof is equivalent to that of a paper record. Access may be permitted only to the extent provided by law. E-notices from the eFileMA.com system containing hyperlinks to impounded documents shall be treated as confidential.

F. Waiver of Mandatory Electronic Filing and Permission to File Paper Original and Copies. Any document required to be e-filed under paragraph C may be filed on paper upon allowance of a motion to waive the e-filing requirement, preferably filed in advance or with the document. The motion must contain a showing of undue hardship, significant prejudice, exigency, or other good cause. For self-represented litigants who are confined in an institution, the requirement of Mass. R. App. P. 20(a)(6)(A) that a paper brief must have a color cover is suspended and no color cover is required.

G. Format. All e-filed documents shall comply with the formatting requirements of the Massachusetts Rules of Appellate Procedure except as modified by the Appeals Court's electronic filing format requirements found on the Appeals Court website. See generally E-Filing Rule 1.

H. No Paper Duplicates. All documents that are e-filed shall be submitted electronically only. Neither a paper original nor duplicate shall be filed unless specifically requested by the Court.

I. Electronic Service of E-Filed Documents.

1. Service of Documents E-Filed in the Appeals Court. Pursuant to E-Filing Rule 3(d), the filer's registration with EfileMA.com constitutes consent to receive electronic service in all cases. All documents submitted electronically through EfileMA.com may be electronically served through EfileMA.com pursuant to E-Filing Rule 7 and such service shall be considered compliant with Mass. R. App. P. 13, provided the other party or party's attorney has registered with EfileMA.com. Registered filers must maintain their name and email address on the eFileMA.com "Public List." If a party's representative has not registered with EfileMA.com, service should be made by the conventional methods (e.g., paper copies and regular mail).

2. No Copies of Applications, Responses, or Oppositions Filed in the Supreme Judicial Court. A party is not required to file or serve a copy in the Appeals Court of any application, response, or opposition that is filed in the Supreme Judicial Court Pursuant to Mass. R. App. P. 11 and 27.1.

J. Mandatory Electronic Notice.

1. Notice from Provider. The eFileMA.com system will transmit electronic notifications (i) when an e-filed document is submitted, (ii) when the Clerk's Office accepts or rejects the document, and (iii) possibly at other times during an e-filing transaction.

2. Notice from the Appeals Court. All attorneys will receive electronic notifications in lieu of paper notices of the court's actions, orders, judgments, rescripts, and decisions. The Court will use the business email addresses on file with the Board of Bar Overseers pursuant to S.J.C. Rule 4:02(11). Attorneys must ensure that their business email address registered with the Board of Bar Overseers is up to date. A self-represented litigant may authorize the Court to send electronic notice in lieu of paper notices.

K. Support. All technical support shall be provided by Provider. The Appeals Court's Clerk's Office may be contacted with procedural questions or with questions regarding the application of this Order.

L. Cessation of Appeals Court's "emotions" email filings. The Appeals Court will no longer accept emails and PDFs of filings at its "emotions@appct.state.ma.us" address. All electronic filings shall be submitted via the eFileMA.com system.

M. Prior Orders Rescinded. The following prior orders of the Appeals Court are hereby rescinded by this Order and no longer in effect:

1. Appeals Court Order Concerning Electronic Filing Pilot Project, adopted March 30, 2016.

2. Appeals Court Order Concerning Number of Copies of Brief and Record Appendix to be Filed, adopted July 29, 2016.

3. Appeals Court Standing Order Requiring the Electronic Filing of All Motions and Letters Filed After Panel Assignment, adopted May 1, 2010, and amended June 1, 2011.

N. Future Changes and Updates. This order may be superseded or amended, in writing, at any time.

O. Effective Date. This Order shall become effective on September 1, 2018.



## **Explanation of Amendments**

### **I. Amendments to the**

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

#### **Standing Order Concerning Motions to Stay a Judgment or Execution of Sentence Pursuant to Mass. R.A.P. 6**

1. **Amend Mass.R.A.P. 20[a][1]-[3] to Mass. R.A.P. 20(a)(4)(A)-(C) and add option to format single justice filings using a proportional font and word count.** This amendment is proposed to subparts of the Standing Orders governing petitions to the single justice and motions to stay. Consistent with the amended Appellate Rules, this amendment would also add the option for filers to format their single justice filings using a proportional font and a word count alternative to the page limit.

Prior Rule 20(a)(1) governed margin size, (a)(2) the requirement of monospaced font sized 12 or larger, and (a)(3) required double spaced font except for headings and footnotes. Those provisions were relocated in the Appellate Rules to Rule 20(a)(4)(A)-(C). See Reporter's Notes (2019) to Rule 20 ("The content from the second paragraph of prior Rule 20(a) concerning the format of text on the pages of the documents encompassed in the rule was revised and relocated to Rule 20(a)(4)."). In addition to being relocated to Rule 20(a)(4), these provisions were revised to allow for the use of a proportional font and a word count as an alternative to using a monospaced font and a page limit.

Under the revised Appellate Rules, if a filer opts to use the proportional font, it is also mandatory that they also use the word count rather than page limit, larger font (14 point or larger), narrower margins (1" or larger on all sides), and include a Rule 16(k) certificate demonstrating how compliance with the word limit was ascertained. If a filer opts to use the traditional monospaced font, they must use the traditional page limit, font size, and margin size. Put another way, a filer cannot choose to use some, but not all, of the new formatting options. The Appeals Court proposes that this scheme be imported to the Standing Orders governing petitions and motions. To do so, text is added to each Standing Order's provisions governing the petition/motion, supporting memorandum of law, and response (formerly opposition). The Appeals Court proposes the following word limits: 1,000 words for 5 pages and 3,500 words for 15 pages. These proposed limits use the same page to words conversion ratio utilized in the new Appellate Rules.

If a proportional font and word count is used, text is added to require a certificate of compliance with the word count. This is consistent with other non-brief filings under the new Appellate Rules (e.g., DAR applications, FAR applications, and motions for reconsideration or modification of decision previously known as petitions for rehearing) which require a word

count certification. The text "required certificate(s)" is added to the title of the subpart of the Standing Orders that includes the new requirement to better alert readers of its existence.

2. **Amend 18(g) to 18(d).** Three of the Standing Orders reference prior Rule 18(g), which previously governed the reproduction of impounded materials in the appendix. That provision was relocated to Rule 18(d). See Reporter's Notes (2019) to Rule 18 ("Rule 18(d), which comprises prior Rule 18(g), adds a requirement to the prior rule that when a separate appendix of impounded material is filed, any lower court order impounding the material must be included in the impounded appendix volume(s). This amendment codifies current impoundment procedures and further ensures the protection of the impounded information."). In addition to revising the Standing Orders to match the correct provision in the new rules, this would impose the new requirement that any lower court impoundment order be included in an impounded appendix volume to single justice petitions and single justice motions to stay.

3. **Amend Mass.R.A.P. 6(b)(2) to Mass.R.A.P. 6(b)(2)(B)-(C).** Part (d) of the Standing Order governing motions to stay currently cites to prior Rule 6(b)(2) to prescribe the time limit for filing a response (formerly opposition) to a motion to stay if the motion is filed "subsequent to the entry of and during the pendency of a direct or collateral appeal in the Appeals Court." Prior Rule 6(b)(2) governed the time period for the Commonwealth to respond to a motion for a stay. The 2019 amendments divide prior Rule 6(b)(2) into three separate provisions: Rule 6(b)(2)(A) governs the response period if the motion for stay is filed prior to docketing in the Appeals Court, Rule 6(b)(2)(B) governs the time period if the motion for stay is filed after docketing in the Appeals Court, and Rule 6(b)(2)(C) authorizes a single justice to modify the time period. Because the Standing Order Part(d)(2) is only concerned with the time limit in cases where the motion for a stay is filed after docketing of the appeal, Rule 6(b)(2)(B) and Rule 6(b)(2)(C) are the only appropriate provisions to cite. Rule 6(b)(2)(A) is not applicable.

4. **Changing "Opposition" to "Response."** Consistent with the amended Appellate Rules, the Appeals Court proposes to change all references to "opposition" to be "response" to reflect that, depending on the particular circumstances of a case or motion, the nonmoving party may want to respond to the moving party's request, but not necessarily oppose that request. Parties would remain free to caption a response as an "opposition" if they so desire.

## **II. Amendments to the Standing Order Concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution**

1. **Amend 18(a) to 18(f).** The Standing Order Concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution governs the dismissal of appeals for lack of prosecution where an appellant does not file a brief and appendix within the time for filing. The Standing Order cites prior Rule 18(a) because it previously governed the time for filing of the appendix. Prior Rule 18(a), last paragraph, first sentence, governed the time for filing the appendix because it provided that: "any appendix shall be filed and served with the brief." This effectively incorporates the brief due date for the appendix. That provision was relocated to be new, standalone provision Rule 18(f) requiring the reference to be changed. See Reporter's Notes (2019) to Rule 18 ("Rule 18(f) is a new subdivision addressing filing and service of the



appendix, including exhibits and transcripts or portions thereof filed in a civil case. The subdivision incorporates the requirements of Rule 19 to the filing and service of the appendix.").

**2. Amend 19(a) to 19(a)(1), 19(b)(1), or 19(b)(2).** The Standing Order Concerning Dismissals of Appeals and Reports in All Cases for Lack of Prosecution governs the dismissal of appeals for lack of prosecution where an appellant does not file a brief and appendix within the time for filing. The Standing Order cites prior Rule 19(a) which previously prescribed the time for filing the appellant brief, appellee brief, and reply brief. However, that provision was divided into subdivisions: 19(a) governing cases with no cross appeal and 19(b) governing cross appeals. The provision was further divided into subparagraphs (e.g., 19(a)(1) governing an appellant's brief in a non-cross appeal) for each specific type of brief. Because the Standing Order is only triggered where an appellant (or cross-appellant) fails to file their principal brief and appendix, the Standing Order is revised to specify 19(a)(1) (appellant brief and appendix - non-cross appeal), 19(b)(1) (appellant brief and appendix - cross appeal), and 19(b)(2) (appellee's principal and response brief and appendix - cross appeal). Importantly, where a party fails to file a necessary brief, the Standing Order prescribes that the appeal will only be "dismissed as to him [such appellant] for lack of prosecution. . ." Thus, in a cross appeal, if an appellant fails to file the brief required by 19(b)(1) or the appellee/cross-appellant fails to file the brief required by 19(b)(2), the portion of the appeal brought by the other party may still proceed if that party files the necessary brief.

**3. Remove reference to deferred appendix and hearing appeal on the original record under prior Rule 18(c) and 18(f).** With leave of court, prior Rule 18(c) authorized the deferred filing of a record appendix and prior Rule 18(f) authorized the hearing of appeals on the original record without the necessity of an appendix. Those provisions were both deleted entirely as the necessary leave of court was rarely, if ever, granted and because the preparation of a suitable appendix is essential to an appellate court's review of an appeal. See Reporter's Notes (2019) to Rule 18. Because the provisions have been deleted from prior Rule 18(c) and (f), reference to them should be removed from the Standing Order to avoid confusion. Any such confusion would be heightened by the fact that Rules 18(c) and (f) were not "reserved" and now contain different provisions.

**4. Remove reference to notice by first class mail to attorneys by the clerk.** Consistent with amended Appellate Rule 31(c), the Appeals Court Standing Order Concerning Electronic Filing, and the Appeals Court Standing Order Governing Electronic Notification of Court Orders, Notices, and Decisions in Lieu of Paper Notices, the Appeals Court proposes to remove reference to providing notice by first class mail to attorneys by the clerk. Under those authorities, the clerk provides notice to attorneys at their electronic business address and provides notice to self-represented parties to their mailing or electronic address, depending upon such party's preference as registered with the clerk.

**5. Remove masculine gender pronouns.** Consistent with the amended Appellate Rules, the Appeals Court proposes to remove several masculine gender pronouns and replace them with gender neutral phrases.

### **III. Amendments to the Standing Order Concerning Electronic Filing.**

1. **Amend 18(g) to 18(d).** See part I.2. of this proposal above.
2. **Delete text regarding the number of required copies if filing on paper.** Part F of the Standing Order Concerning Electronic Filing governs waiver of mandatory e-filing and provides the number of copies that must be filed if filing on paper. The Standing Order requires parties to file the number of copies of various documents currently required by the Appeals Court given advances in paperless practices. These numbers are less than the numbers required by the prior Appellate Rules and therefore states in two instances "Notwithstanding the requirement in Mass. R. App. P. . . ." The Appellate Rules are now amended to match the number of copies required under the Standing Order. Therefore, it is proposed that these provisions be deleted.
3. **Amend Mass. R. App. P. 20(a) to Mass. R. App. P. 20(a)(6)(A).** Part F.3. of this Standing Order exempts self-represented inmates from the color cover requirement on a paper brief. The Standing Order cites prior Rule 20(a) but the only portion of new Rule 20(a) relevant to the color cover of a brief is now Rule 20(a)(6)(A).
4. **Hyperlink.** For technical reasons, an amendment to the hyperlink is proposed that will allow viewers easier access to the webpage cited and is less prone to breakage in the future.

### **IV. Repealing the Appeals Court Standing Order concerning Conferences in Civil Appeals.**

It is proposed that this Standing Order be repealed consistent with the deletion of prior Rule 21, which similarly authorized an appellate court to hold a prehearing conference "to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court." The Reporter's Notes to that revision explain "[t]his rule was stricken entirely as such conferences are not held. Even without such a rule, an appellate court or a single justice thereof still has the inherent authority to order such a conference." Reporter's Notes (2019) to Rule 21. The same reasoning applies to repealing the standing order, which has not been utilized since 2002. If and when such a conference is appropriate in a particular case, an appellate court or single justice can fashion an appropriate order for the needs of that case without this standing order. Further, if and when a new conference program is initiated, a new standing order can be adopted to meet the particular needs of any new program.