

## **REPORTER'S NOTES**

### **MASSACHUSETTS RULES OF APPELLATE PROCEDURE**

#### **Rule 18. Appendix to the Briefs: Contents, Cost, Filing, and Service**

##### **Reporter's Notes—2023**

Rule 18 (a) (1) (D) adds language to clarify that any party seeking to rely on portions of the record that should not be included in the appendix must file a motion for transmittal of such portions of the record in the appellate court to allow for consideration of those portions of the record as stated in the new subparagraph Rule 18 (a) (1) (G).

Rule 18 (a) (1) (G) is a new subparagraph clarifying the process by which parties delineate portions of the record that the parties intend to rely on in their briefs but that should not or cannot be included with the record appendix. This is in recognition of the fact that there are instances when actual physical evidence (such as a weapon, medical device, etc.) was part of the record in the lower court, and consideration of the object itself is necessary to the appellate claim(s). Similarly, a lower court may have issued an order preventing the release or dissemination of some evidence or information (*e.g.*, the identity of a confidential informant) which might be critical to the appellate matter. Additionally, there may be certain portions of the record the reproduction or transmittal of which (such as visual material of a child depicted in sexual conduct) might itself be a violation of State or Federal criminal laws.

In each such case, the proponent of the inclusion of such portions of the record must file a motion in the appellate court for the transmittal of such portions of the record at the time of the filing of the proponent's brief. This subparagraph is intended to encompass only those circumstances where such portions cannot or should not be included in the record appendix and does not include those circumstances where a party is required to send reproductions of exhibits separately to the appellate court, such as in the case of reproduction of audiovisual materials marked as exhibits. In such case, parties are referred to Rule 9 (b), Rule 18 (a) (1) (F), and Rule 18 (e).