

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.

Kimberly S. Budd
Chief Justice

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1. Court Submitting Rules for Approval:
Appeals Court
 2. Date Rules Submitted for Approval:
August 7, 2023
 3. Date Approved & Promulgated by the Supreme Judicial Court:
May 7, 2024
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendment to Massachusetts Appeals Court Rule 6 as described in the attached letter from Chief Justice Mark Green dated August 7, 2023.
 5. Effective Date:
July 1, 2024

(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

August 7, 2023

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

Re: Proposed amendments to the Appeals Court Rule 6.0, rescission of Administrative Order 20-6, and promulgation of Administrative Order 23-1

Dear Justice Gaziano:

The Appeals Court requests that the Supreme Judicial Court approve the attached proposed amendments to Massachusetts Appeals Court Rule 6.0, which will be titled, "Motions for Stay or Injunction Pending Appeal Filed Pursuant to Mass. R. A. P. 6." The amendments are intended to update and synthesize the rule with proposed amendments to Mass. R. A. P. 6, "Stay or Injunction Pending Appeal," which the Supreme Judicial Court Standing Advisory Committee on the Rules of Appellate Procedure is submitting for approval by the SJC Rules Committee. Relatedly, the Appeals Court is amending its Administrative Order 20-6, "Special Procedures Applicable to Motions to Stay a Judgment in a Summary Process Case," to become Administrative Order 23-1, "Special Procedures Applicable to Motions for Stay or Injunction Pending Appeal Filed in a Summary Process Case Pursuant to Mass. R.A.P. 6 and M.A.C. Rule 6.0." Amendments to Administrative Order 20-6 are similarly made in response to the proposed amendments to Mass. R. A. P. 6.

The Appeals Court published a notice of the proposed amendments to Appeals Court Rule 6.0 and Administrative Order 20-6 and invited comments. Three comments were received. The comments primarily suggested formatting and grammatical changes to Appeals Court Rule 6.0 as well as some minor substantive changes to better synchronize Rule 6.0 with the amendments to Mass. R. A. P. 6. The comments also prompted a few changes to the administrative order in order to improve its clarity.

Attached are two copies of the proposed amendments to the Massachusetts Appeals Court Rule 6.0, one clean copy and one showing the strikethrough and added text. In addition, attached are clean and strikethrough versions of the related administrative order.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark V. Green", with a long horizontal line extending to the right.

Mark V. Green,
Chief Justice

cc: Hon. Gabrielle Wolohojian, Chair, S.J.C. Standing Advisory Committee on the Rules of Appellate Procedure
Timothy Maguire, Deputy Legal Counsel and liaison to the S.J.C. Standing Advisory Committee on the Rules of Appellate Procedure
Joseph Stanton, Clerk

REDLINE VERSION

Rule 6.0 Motions ~~to~~for Stay or Injunction Pending AppealExecution of a Judgment or Sentence Filed 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, "Stay or Injunction Pending Appeal," shall include, in the following order:

- (1) a request for ~~a stay~~relief, which shall state briefly the nature and date of entry of the judgment, order, or sentence from which an appeal has been taken~~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 judge allowing or denying the motion for stay relief or, if no such motion was filed in the trial court, a showing why filing such a 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 or order, notice of appeal, and the trial court's order allowing or denying the prior motion for a stay (including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court).

~~References to the parties in the motion shall be by the designation of the party in the trial court (e.g., "plaintiff," "defendant," "third-party defendant," etc.).~~ The motion shall not exceed 5 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. References to the parties in the motion shall be by the designation of the party in the trial court (e.g., "plaintiff," "defendant," "third-party defendant," etc.).

(b) Supporting Memorandum of Law ~~and Record Appendix~~. The motion shall, unless otherwise ordered, be accompanied by a memorandum of law in support of the movant's position, with citations to appropriate authorities and a statement addressing why a stay relief is appropriate. ~~(The memorandum shall not to exceed 15 pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R. A. P. 20(a)(4)(A)-(C) without leave of the court.)~~ 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 documents filed in the trial court, including those filed by~~

~~the other party or parties. In criminal cases, the defendant's board of probation record may be filed in a separate record appendix volume, the cover of which clearly indicates that it includes impounded material. Each volume of 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 Record Appendix.

(1) Contents.

(i) Generally. A record appendix shall accompany the motion and memorandum of law and shall include a current copy of the lower court docket entries and all relevant parts of the lower court record, including, but not limited to, the lower court judge's decision and reasoning and all filings and information submitted to the lower court in connection with the motion, including relevant filings by the other party or parties.

(ii) Criminal cases. In criminal cases, a copy of the defendant's criminal history, if any, shall be filed in a separate record appendix volume, which shall be clearly designated as impounded on the cover.

(iii) Transcripts. A transcript need not accompany the motion unless oral findings and rulings were placed on the record by the lower court judge. If it is not practicable to timely obtain the transcript, the movant may substitute an audio recording of the hearing or an affidavit from counsel setting out the judge's oral findings and rulings until the transcript is prepared.

(2) Form. Each volume of 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.

~~(ed)~~ Response; Form. The non-moving party or parties to the case may, but need not, file and serve a response thereto ~~(not to exceed 15 pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R. A. P. 20[a][4][A]-[C] without leave of court)~~ setting forth reasons why the motion should or should not be granted. The response shall (not to exceed 15 pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R. A. P. 20(a)(4)(A)-(C) without leave of court). 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.

~~(de)~~ Response; Timing.

(1) For motions filed in all civil matters and ~~for~~in 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 7 days after ~~the~~ service of the motion (10 days if the movant's certificate of service required under Appeals Court Rule 6.0[~~fe~~] shows service by first-class mail or its equivalent [as defined by Mass. R. A. P. 1(c)], 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(~~bc~~)(2)-(~~3B~~)-(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 7 days after the service of the motion (10 days if the movant's certificate of service required under Appeals Court Rule 6.0[~~fe~~] shows service by first-class mail or its equivalent), or such other time as the court may direct.

(ef) Filing; Service; Required Certificate(s).

(1) The motion, memorandum of law, record appendix, and any subsequently filed response and supplemental record appendix shall be filed electronically if the filing party is represented by counsel. A motion to waive the mandatory electronic filing requirement may be made in accordance with M.A.C. Rule 13.0(f). 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.

(2) Service may be personal, by first-class mail or its equivalent, 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 the party's counsel. Service by first-class mail or its equivalent 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.

(3) All filings, ~~Whether~~ filed electronically or on paper, all filings shall include a certificate of service. The certificate of service shall indicate service on all other parties in the case, including the service and filing of a copy in and 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 its equivalent, 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 or its equivalent 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.~~

(4) If a motion 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.

(fg) Impounded or ~~e~~C~~o~~n~~f~~i~~d~~e~~n~~t~~i~~a~~l~~ ~~i~~n~~f~~o~~r~~m~~a~~t~~i~~o~~n~~. ~~In any case in which~~If 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.

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

CLEAN VERSION

Rule 6.0 Motions for Stay or Injunction Pending Appeal Filed Pursuant to Mass. R. A. P. 6

(a) Motion; Form. A motion pursuant to Mass. R. A. P. 6, "Stay or Injunction Pending Appeal," shall include, in the following order:

- (1) a request for relief, which shall state briefly the nature and date of entry of the judgment, order, or sentence from which an appeal has been taken and the name of the judge who entered it;
- (2) the text of the order and rationale of the trial court judge allowing or denying relief or, if no such motion was filed in the trial court, a showing why filing such a 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 or order, notice of appeal, and the trial court's order allowing or denying the motion for a stay (including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court).

The motion shall not exceed 5 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. References to the parties in the motion shall be by the designation of the party in the trial court (e.g., "plaintiff," "defendant," "third-party defendant," etc.).

(b) Supporting Memorandum of Law. The motion shall, unless otherwise ordered, be accompanied by a memorandum of law in support of the movant's position, with citations to appropriate authorities and a statement why relief is appropriate. The memorandum shall not exceed 15 pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R. A. P. 20(a)(4)(A)-(C) without leave of the court. The argument shall make reference to those portions of the record which are directly relevant to the issues raised by the motion.

(c) Record Appendix.

(1) Contents.

(i) Generally. A record appendix shall accompany the motion and memorandum of law and shall include a current copy of the lower court docket entries and all relevant parts of the lower court record, including, but not limited to, the lower court judge's

decision and reasoning and all filings and information submitted to the lower court in connection with the motion, including relevant filings by the other party or parties.

(ii) Criminal cases. In criminal cases, a copy of the defendant's criminal history, if any, shall be filed in a separate record appendix volume, which shall be clearly designated as impounded on the cover.

(iii) Transcripts. A transcript need not accompany the motion unless oral findings and rulings were placed on the record by the lower court judge. If it is not practicable to timely obtain the transcript, the movant may substitute an audio recording of the hearing or an affidavit from counsel setting out the judge's oral findings and rulings until the transcript is prepared.

(2) Form. Each volume of 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.

(d) Response; Form. The non-moving party or parties to the case may, but need not, file and serve a response thereto setting forth reasons why the motion should or should not be granted. The response shall not exceed 15 pages of text in monospaced font or 3,500 words in proportional font compliant with Mass. R. A. P. 20(a)(4)(A)-(C) without leave of court. 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.

(e) Response; Timing.

(1) For motions filed in all civil matters and in 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 7 days after service of the motion (10 days if the movant's certificate of service required under Appeals Court Rule 6.0[f] shows service by first-class mail or its equivalent [as defined by Mass. R. A. P. 1(c)]), 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(c)(2)-(3).

(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 7

days after the service of the motion (10 days if the movant's certificate of service required under Appeals Court Rule 6.0[f] shows service by first-class mail or its equivalent), or such other time as the court may direct.

(f) Filing; Service; Required Certificate(s).

(1) The motion, memorandum of law, record appendix, and any subsequently filed response and supplemental record appendix shall be filed electronically if the filing party is represented by counsel. A motion to waive the mandatory electronic filing requirement may be made in accordance with M.A.C. Rule 13.0(f). 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.

(2) Service may be personal, by firstclass mail or its equivalent, 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 the party's counsel. Service by first-class mail or its equivalent 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.

(3) All filings, whether filed electronically or on paper, shall include a certificate of service. The certificate of service shall indicate service on all other parties in the case, and 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. (4) If a motion 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.

(g) Impounded or Confidential Information. If 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.

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