Massachusetts Rules of Appellate Procedure

Including amendments effective September 1, 2026

Published by the Massachusetts Trial Court Law Libraries

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- The Rules, Lawyers Weekly Publications, loose-leaf

RULE 1: SCOPE OF RULES: DEFINITIONS

(a) Scope and Construction of Rules

These rules govern procedure in appeals to an appellate court. They shall be construed, administered, and employed to secure the just, speedy, and inexpensive determination of appeals. They shall be construed in conjunction with the rules and standing orders of the appellate courts.

(b) Rules Not to Affect Jurisdiction

These rules shall not be construed to extend or limit the jurisdiction, as established by law, of the Supreme Judicial Court or the Appeals Court.

(c) Definitions

As used in these rules, unless the context clearly indicates otherwise:

“appeal” means an appeal to an appellate court and supersedes any procedure other than reservation and report by which matters have heretofore been brought before an appellate court for review.

“appellate court” means the full Supreme Judicial Court, the full Appeals Court, or a statutory quorum of either, as the case may be, whichever court is exercising jurisdiction over the case at bar.

“child welfare case” means any case that is before a court of competent jurisdiction pursuant to G.L. c. 119, §§ 21-39J; G.L. c. 190B regarding guardianship of minors; or G.L. c. 210, §§ 1-11.

“clerk” means “clerk,” “register,” “recorder,” and their respective assistants or deputies; “clerk of the appellate division” means the clerk of the trial court from which the action was appealed or reported to the appellate division.

“decision” means, when referring to an appellate court, the court’s written opinion, memorandum and order pursuant to M.A.C. Rule 23.0, or other final adjudicative order in the case.

“first class mail or its equivalent” means (1) use of the United States Postal Service through first class postage or other class of mail that is at least as expeditious, postage prepaid or (2) dispatch to a third-party commercial carrier for delivery within 3 days. Registration or certification shall not be required unless specifically stated to be necessary.

“indigent party” means a person who is a party to a legal proceeding and whom a court has determined meets the statutory criteria to obtain waiver, reduction, or payment of certain fees and costs incident to civil and criminal litigation, including appeals in that proceeding.

“lower court” means the single justice, court, appellate division, board, commission, or other body whose decision is the subject of a direct appeal to an appellate court; for the purpose of Rule 9, the term includes any member of the lower court.

“party” means a person or entity appearing in a case, including an appeal. In the context of performing any act under these rules, a party means counsel, where a party is represented by counsel, and, when a party is not represented by counsel, it means the self-represented litigant.

“rescript” means the appellate court’s order, direction, or mandate to the lower court disposing of the appeal.

“single justice” means a single justice of whichever appellate court is exercising jurisdiction over the case at bar.

“transmission” or **“transmit”** means the sending or conveying of a document or court record through a medium authorized by the court or these rules, and may include, but is not limited to, first class mail or its equivalent, electronic filing, electronic mail, facsimile, or electronic file share.

(d) Construction

Words or phrases importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

Rule History

Amended May 15, 1979, effective September 1, 1979; amended May 29, 1986, effective July 1, 1986; amended effective July 28, 1987; amended effective November 15, 1995; amended July 28, 1999, effective September 1, 1999; amended June 24, 2009, effective July 1, 2009; amended October 31, 2018, effective March 1, 2019; amended July 7, 2021, effective September 1, 2021.

Reporter’s Notes

(2021)

The definition of “clerk” in Mass. R. A. P. 1(c) was amended to clarify that the procedure for obtaining review in the appellate division of the District Court or Boston Municipal Court is no longer restricted to the report procedure under now-repealed Rule 64 of the Dist./Mun. Cts. R. Civ. P. Review may be obtained by appeal or report. See Rules 1 and 5 of the Dist./Mun. Cts. R. A. D. A., and Mass. R. Civ. P. 64(b). The amendment added the words “appealed or.”

In addition, a technical amendment was made to the definition of "decision" in Rule 1(c) to reflect amendments made to the Appeals Court Rules in 2020. The reference to “Appeals Court Rule 1:28” was deleted and replaced with “M.A.C. Rule 23.0.”

(2019)

These Reporter’s Notes describing the 2019 amendments were prepared by the subcommittee appointed by the Supreme Judicial Court Standing Advisory Committee on the Rules of Civil and Appellate Procedure, in conjunction with the Standing Advisory Committee on the Rules of Criminal Procedure.

I. Overview

In 2015, the Supreme Judicial Court Standing Advisory Committee on the Rules of Civil and Appellate Procedure, in conjunction with the Standing Advisory Committee on the Rules of Criminal Procedure, appointed a subcommittee to review the Massachusetts Rules of Appellate Procedure (hereinafter "Rules"). The Rules were enacted in 1974 and, although many isolated amendments were adopted over the ensuing years, no full-scale review of the Rules had occurred in over four decades. Accordingly, the Standing Advisory Committee charged the subcommittee to review the Rules and identify proposals that would:

- make the Rules more easily understood and followed;
- facilitate the just and expeditious resolution of appeals;
- clarify and simplify filing and formatting requirements;
- eliminate arcane language and incorporate consistent style and terminology;
- incorporate existing practices and procedures; and
- facilitate the appellate and trial courts' development of paperless processes.

In 2017, the subcommittee posted many proposed amendments for a period of public comment and review. Numerous public comments were submitted. The subcommittee studied the comments and made many significant changes in response.

Where possible, the subcommittee sought to preserve the current Rules' language and related procedures so not to disrupt established practices that, for the most part, operate well. Consequently, many proposed amendments are merely stylistic or organizational, and require minimal change to current procedures. Other proposed amendments are substantive and intended to improve a rule or procedure consistent with the subcommittee's charge.

The subcommittee also compared the relevant Federal Rules of Appellate Procedure, aware of both the differences between the Massachusetts and Federal courts and case types, and of the recent Federal "restyling" amendments designed to make those rules more comprehensible. While the subcommittee followed the spirit of the Federal restyling amendments, the subcommittee concluded the preferable route in most instances would be to maintain the existing Massachusetts Rules' language, style, and procedures instead of proposing a wholesale adoption of the current Federal rules. However, in certain situations the subcommittee derived amendments from adopted Federal language. See, e.g., Rules 4(d) and 13(a)(2) (timeliness of filings by a self-represented party confined in an institution); Rules 20(a)(2) and (a)(3) (word count alternative to page limitation for briefs).

The subcommittee's proposals were endorsed by the Supreme Judicial Court Standing Advisory Committee on the Rules of Civil and Appellate Procedure, and by the Standing Advisory

Committee on the Rules of Criminal Procedure. In 2018, the Supreme Judicial Court approved the amendments and identified their effective date.

II. Global Amendments

The following global amendments were made, where appropriate, throughout the Rules:

(1) Gender Neutrality

Masculine gender pronouns were removed in favor of gender-neutral phrases.

(2) Provisions Rendered Obsolete by Technology

The amendments removed certain provisions that had become obsolete because of technological developments and work processes.

(3) Word Count

The Rules were amended to allow, as does Fed. R. App. P. 32(a)(7), the use of a word limit together with a proportionally spaced font, as an alternative to a page limit, in setting the permissible lengths of principal and reply briefs, amicus briefs, motions for reconsideration or modification of decision (previously called petitions for rehearing), and applications for and responses to direct and further appellate review. The word limits are not intended to allow for longer documents.

The word limits are: 11,000 for a principal brief in all cases except cross appeals (Rule 20(a)(2)(A)); 4,500 for a reply brief in all cases except cross appeals (Rule 20(a)(2)(B)); 11,000 for an appellant's principal brief in a cross appeal (Rule 20(a)(3)(A)); 13,000 for an appellee's principal/response brief in a cross appeal (Rule 20(a)(3)(B)); 11,000 for an appellant's response/reply brief in a cross appeal (Rule 20(a)(3)(C)); 4,500 for an appellee's reply brief in a cross appeal (Rule 20(a)(3)(D)); 7,500 for an amicus brief (Rules 20(a)(2)(C) and (a)(3)(E)); 2,000 for a motion for reconsideration or modification of decision (Rules 27(b) and (c)); 2,000 for argument in applications for direct appellate review and for further appellate review, as well as any response to those documents (Rules 11(b), 11(c), and 27.1); and 1,000 for a response to a transfer from the Supreme Judicial Court (Rule 11.1).

The amendments exclude items for inclusion in the length limits consistent with current Rule 16(h), and current Fed. R. App. P. 32(a)(7)(B)(ii), except that the signature block also is excluded. See Rules 20(a)(2)(D) and 20(a)(3)(E). The amendments to Rule 16(k) require a certification as to how compliance with the brief-length limit was ascertained. See Rules 20(a)(2)(F), 20(a)(3)(G) and 16(k). The Federal rules likewise require a certificate of compliance for word count. See Fed. R. App. P. 32(a)(7)(C).

This amendment eliminates the considerable time parties sometimes spend using formatting devices solely to comply with the current page limits.

The amendments are consistent with the word limit/proportional font approach in the Federal rules.

Importantly, the amendments allow for no more than the amount of text that currently fits into a properly formatted 50-page principal brief or 20-page reply brief. The subcommittee reviewed the Federal rules for guidance as to comparative ratios among the different types of briefs (i.e., principal, reply, and amicus), but not for the absolute numbers of words, since it was determined that adopting the Federal word count applicable to the various briefs would lead to substantially longer briefs than the 50 pages currently authorized in the Massachusetts rules. For this reason, the word limits for briefs are less than their Federal counterparts and, as stated above, allow no more than the amount of text permitted under the prior rules.

Under the amended rule, a significant change is that for briefing in a cross appeal, the appellee's principal brief may include approximately the amount of text that fits into a properly formatted 60-page brief. This is consistent with the Federal approach by recognizing that in an appellee/cross-appellant's brief, the appellee must both respond to the arguments in the appellant's brief and present the appellee's arguments in the cross appeal. For a further discussion of the amendments regarding the briefing process in a cross appeal, see the Reporter's Note to Rule 20(a)(3).

(4) Freestanding Paragraphs: Separation into Smaller Segments and Numbering

Multiple prior rules had long, freestanding paragraphs either comprising the complete rule or contained within multiple paragraphs of a rule. This decreased readability of the rule and made reference to particular provisions of a rule more difficult. Accordingly, in 2019 many freestanding paragraphs were numbered and separated into distinct paragraphs, making it easier to locate and refer to different sections. Where appropriate, titles were also added.

(5) Consistent Numbering

Throughout the Rules, numbers were consistently changed to numeral format. Excluded from this change are internal rule cross-references and other citations, as well as numbers that begin a sentence.

(6) Changing "Paper" to "Document"

The word "paper" is replaced with "document" throughout the Rules. The word "document" encompasses more media (e.g., PDFs) and is consistent with the courts' transition to electronic filing and storage of electronic documents.

(7) Changing Deadlines to Increments of 7 Days

Many filing deadlines in the Rules were revised to be in increments of 7. Most 10-day deadlines were converted to 14-day deadlines, and all 20-day deadlines to 21-day deadlines. Because a

court's action is often the event that triggers a deadline, changing the deadlines to increments of 7 will guarantee that the final day falls on a weekday. For example, if the Appeals Court releases a decision on a Tuesday, the final day for filing an application for further appellate review is certain to fall 21 days later on the third following Tuesday. See Rules 23(a) and 27.1(a). This clarifies filing dates for parties and makes processing filings easier in the appellate courts. The change also significantly decreases the likelihood that a deadline will fall on a non-business day, which causes confusion to litigants who are not aware that such a deadline is extended to the next business day. See Rule 14(a). Deadlines in increments of 30 or 40 days are unchanged because those are well established and traditionally referenced time periods that are not as affected by weekends as the shorter time periods referenced above.

(8) Changing "Trial" Court to "Lower" Court

All references to the "trial court" are amended to lower court, consistent with the definition of "lower court" in Rule 1(c).

(9) Changing "Opposition" to "Response"

All references to "opposition" are amended to "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 remain free to caption a response as an "opposition" if they so desire.

(10) Form of Cross-References

Internal rule cross-references to other Massachusetts Rules of Appellate Procedure are changed to be in the form "Rule 6(a)(2)" instead of "paragraph (a)(2) of this rule," to clarify the cross-reference.

III. Amendments to Rule 1

Rule 1(a)

The title of this subdivision was amended by adding "and Construction" to clarify the content of the rule. In addition, a new second sentence was added stating that the Rules should be construed in order to secure the just, speedy, and inexpensive determination of appeals. This sentence is consistent with Fed. R. Civ. P. 1 and Mass. R. Civ. P. 1. As stated in the 2015 Reporter's Notes to Mass. R. Civ. P. 1, "The purpose of the change was to acknowledge that both the court and the parties have the obligation to employ the rules for the purposes set forth." The appellate courts and the parties have the same obligation as the lower court, leading to this amendment.

A new sentence has been added to acknowledge and highlight that these Rules are not to be viewed in isolation. In addition to complying with these Rules, parties must also comply with the Rules of the Supreme Judicial Court, Appeals Court Rules, and standing orders of the appellate courts, including but not limited to: S.J.C. Rule 1:15 (impoundment procedure in the appellate

courts), S.J.C. Rule 1:21 (corporate disclosure statement), and Appeals Court Rule 1:28 (summary disposition).

Including in Rule 1(a) a reference to the appellate courts' rules and standing orders also removes a so-called "trap for the unwary," as individuals who rely only on the Rules of Appellate Procedure may miss additional procedural requirements and potentially compromise their appellate rights. See Commonwealth v. Hartsgrove, 407 Mass. 441, 444-445 (1990) ("The Massachusetts Rules of Appellate Procedure were intended to simplify the procedure by which individuals take a case from the trial court to the appellate court, removing many of the traps for the unwary which previously prevented a litigant from having his appeal heard on the merits."). To the extent possible, the 2019 amendments have incorporated and cross-referenced other appellate court requirements, to eliminate such "traps."

Rule 1(b)

The second sentence of this subdivision was deleted as unnecessary in light of the broad language of the first sentence. An appeal from a decision of a single justice of the Supreme Judicial Court must be to the Supreme Judicial Court, but other proceedings related to such an appeal may not be. See Pixley v. Commonwealth, 453 Mass. 827 (2009) (describing subsequent proceedings related to the appeal to take place in the Appeals Court); Commonwealth v. Pixley, 77 Mass. App. Ct. 624 (2010) (related proceedings in the Appeals Court).

Rule 1(c)

The clause "unless the context clearly indicates otherwise" was added to the beginning of the rule to address instances when the words, as used in the Rules, are more broad or narrow than that included in the definitions. Rule 1(c) was also amended by adding new or revising existing definitions as follows:

"Appellate Court": The word "statutory" before "jurisdiction" was removed because appellate court jurisdiction is derived from additional sources than only a statute. For instance, the jurisdiction of the Supreme Judicial Court is derived primarily from the Massachusetts Constitution and the Appeals Court's statutory jurisdiction has been expanded by decisions of the Supreme Judicial Court.

"Child welfare case": The reference to G.L. c. 190B in the definition of "child welfare case" was revised to clarify that only the provisions of G.L. c. 190B regarding guardianship of minors is encompassed in the definition, so as to ensure the definition is neither over-nor under-inclusive.

"Decision": A definition of "decision" was added to distinguish between the appellate court's written opinion, memorandum and order pursuant to Rule 1:28, or other final adjudicative order in the case (the decision), and the "rescript," which is the appellate court's order, direction, or

mandate disposing of the appeal. The prior rules' use of "rescript" caused some confusion for parties as to when to begin calculating the time to file a petition for rehearing and an application for further appellate review. In accordance with this definition, the word "rescript" was replaced with "decision" in Rules 27(a), 27.1(a) and 27.1(b), as well as in Rules 23(a), 23(b), and 31(c).

"First class mail or its equivalent": This definition has been expanded to include "or its equivalent" to first class mail and specify that a third-party commercial carrier is permissible. Including third-party carriers within the definition of "first class mail" conforms with the parallel Fed. R. App. P. 25(a)(2)(B). In addition, this definition better serves the parties by making it clear that these services may be used. Requiring "delivery within 3 days" ensures that use of a third-party carrier is comparable to the use of United States Postal Service first class mail.

"Indigent Party": A definition of "indigent party" was added. This new term replaces the prior term, "in forma pauperis," throughout the Rules. "In forma pauperis" was not commonly used in practice or in the relevant legal authorities. "Indigent party" is the term set forth in the relevant Massachusetts statutes, see G. L. c. 261, §§ 27A-27D and 29, and rules of court, see S.J.C. Rule 3:10.

"Lower court": The definition was amended by revising "whose decision is the subject of an appeal" to "whose decision is the subject of a direct appeal to an appellate court." This amendment is intended to clarify that where an appeal from an administrative agency decision is first reviewed by the lower court, such as the Superior Court pursuant to G.L. c. 30A, the other body is not the lower court.

"Party": A new definition of "party" is intended to recognize that, as used throughout the Rules, a "party" may mean a person or entity participating in a proceeding or appeal (such as an appellant, appellee, petitioner, respondent, etc.). When used to describe any act that is performed under the Rules (such as filing or serving documents), "party" may mean counsel, where a party is represented by counsel, or, when a party is not represented by counsel, it means the self-represented litigant. This recognizes the reality that if a person or entity is represented by counsel in an appeal, it will be counsel that is performing the acts necessary to carry out the appeal. This definition avoids the need to explicitly reference both counsel and any self-represented litigant in each of the numerous places "party" is used in the Rules in connection with performing an act. The definition is not intended to make any substantive change to the rights of a person or entity to participate in a legal proceeding or appeal.

"Rescript": A stylistic revision to "rescript" is made to clarify rescript "means the appellate court's order, direction, or mandate to the lower court disposing of the appeal." No substantive change is intended.

“Single justice”: The word “statutory” was removed before “jurisdiction” because the single justice’s authority is derived from other means than statute.

“Transmission” or “transmit”: A new definition was added to clarify that these words allow for the sending or conveying of documents or court records using a method authorized by the court. The definition provides a non-exhaustive list of current methods of transmission used by the courts and is intended to allow for future methods as new technologies are adopted by the courts.

Rule 1(d)

The last clause of prior Rule 1(d) which stated “words importing the masculine gender may include the feminine and neuter[,]” was removed. The sentence was no longer necessary as words that import the masculine gender were globally removed from the Rules and replaced with gender-neutral language.

(2009)

The 2009 amendments reflect changes resulting from the adoption of the Massachusetts Uniform Probate Code.

(1999)

[Rule 1(c)] The 1999 amendment to Appellate Rule 1(c) was part of a comprehensive set of amendments to the Appellate Rules (Rules 1, 3, 4, 8, and 10) that had been proposed by the Supreme Judicial Court Committee on Appeals of Child Welfare Cases. The Committee’s recommendations were intended to: (1) provide a uniform appeal period for child welfare cases; (2) establish a procedure for filing a notice of appeal which would eliminate the taking of appeals on behalf of absent and disinterested clients; (3) establish a procedure for the appointment of appellate counsel which makes it clear that trial counsel continues to be responsible for all trial court proceedings; (4) expedite the assembly of the record; and (5) provide notice to the trial court, for jurisdictional purposes, when appeals are entered in the appellate courts.

The amendment to Appellate Rule 1(c) defines the term “child welfare case” as it is used in the Appellate Rules.

(1995)

[Rule 1(b)] The 1995 amendment to Mass.R.A.P. 1(b), effective November 15, 1995, provides that the Rules of Appellate Procedure are not applicable to proceedings governed by Supreme Judicial Court Rule 2:21, also effective November 15, 1995. Supreme Judicial Court Rule 2:21 regulates the procedure for appeal to the full court of a single justice’s denial of relief from an interlocutory ruling in the trial court.

(1987)

[Rule 1(b)] This amendment deletes the reference to appeals from "a decision of the Appellate Division of the District Courts." Pursuant to G.L. c.211A, §10, as amended, review of such decisions is in the first instance by the Appeals Court.

(1979)

[Rule 1(a)] Subdivision (a) of Rule 1 is amended by the deletion of the word "civil," thereby enlarging the scope of the Rules of Appellate Procedure to encompass both civil and criminal appeals. As thus amended, the rules govern interlocutory appeals in criminal cases (G.L. c. 278, § 28E, as amended; Mass. R. Crim. P. 15 [1979]), appeals from single justice proceedings and appeals from final convictions.

Bills of exceptions (former G.L. c. 278, § 31), writs of error (former G.L. c. 250, §§ 1-2, 9-13), and the limited "appeal" from a judgment of the Superior Court based on a "matter of law apparent upon the record" (former G.L. c. 278, § 28) are superseded by an appeal under these rules by virtue of subdivision (c). The appeal available pursuant to the rules is similar in many respects to the direct appeal on the transcript previously provided by G.L. c. 278, §§ 33A-33H, but the assignment of error as a vehicle for isolating and identifying issues (G.L. c. 278, § 28D) is abolished. Reports in criminal cases are governed by Mass. R. Crim. P. 34 and Mass. R. App. P. 5.

"Lower court" as defined in subdivision (c) may include a justice of the district court department sitting in a jury-waived session. While ordinarily the only avenue for review of a judgment or order in a jury-waived session will be by way of appeal to a jury session, the Commonwealth is granted an interlocutory appeal of orders granting motions to dismiss or to suppress evidence by G.L. c. 278, § 28E, as amended, and Mass. R. Crim. P. 15(a).

(1973)

The Appellate Rules, modeled almost entirely upon the Federal Rules of Appellate Procedure, drastically alter the procedure for judicial review in non-criminal cases as heretofore known in Massachusetts. Mass. R. Civ. P. 46 having eliminated the concept of the exception, all existing authority and learning pertaining to bills of exceptions are now obsolete. In addition, the Appellate Rules eradicate heretofore existing distinctions between bills of exceptions, appeals, claims of reports, and the like. The Appellate Rules are drafted to apply to any "procedure by which matters have heretofore been brought before an appellate court for review," except reservation and report (see Mass. R. Civ. P. 64; M.R.A.P. 5). The word "appeal" by definition includes all such preexisting procedures. The Appellate Rules apply to any review by the full Supreme Judicial Court or the Appeals Court of the decision of any "lower court," which latter term is defined to include any

"single justice, court, appellate division, board, commission, or other party whose decision is the subject of an appeal."

Note that in the Appellate Rules "appellate court" refers to either the full Supreme Judicial Court or the full Appeals Court, whichever is then exercising jurisdiction, and that "single justice" similarly refers to a single justice of either court.

"Rescript," a term well-known to Massachusetts practice, covers the meaning of "mandate," the term used in the Federal Rules, F.R.A.P. 41.

RULE 2: SUSPENSION OF RULES

In the interest of expediting decision, or for other good cause shown, the appellate court or a single justice may, except as otherwise provided in Rule 14(b), suspend the requirements or provisions of any of these rules in a particular case, on such reasonable terms as the court or the single justice may order, on application of a party or on its own motion and may order proceedings in accordance with its direction.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The last sentence of Rule 2, which stated that "[s]uch a suspension [of the Rules] may be on reasonable terms," was struck and its substance relocated and incorporated within the rule's principal sentence. The amended language continues to require that any suspension of the Rules must be on "reasonable terms" and that either "the court or the single justice may" enter an order suspending the requirements or provisions of any of these Rules in a particular case.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1973)

Appellate Rule 2, substantially tracking F.R.A.P. 2, injects flexibility into the appellate structure. It permits relaxation of the rules in the interest of expedition, or for good cause, except enlarging appeal time beyond one year from the date the appeals period begins to run.

RULE 3: APPEAL - HOW TAKEN

(a) Filing the Notice of Appeal

(1)

An appeal permitted by law from a lower court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by Rule 4, with service upon all parties. Failure of an appellant to take any step other than the timely filing of a notice of appeal shall not affect the validity of the appeal, but shall be ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(2)

A party need not claim an appeal from an interlocutory order to preserve the party's right to have such order reviewed upon appeal from the final judgment; but for all purposes for which an appeal from an interlocutory order has heretofore been necessary, it is sufficient that the party comply with the requirement of Massachusetts Rule of Civil Procedure 46 or Massachusetts Rule of Criminal Procedure 22, whichever was applicable to the trial of the case in the lower court.

(b) Appeals by Multiple Parties

If 2 or more persons are entitled to appeal from a judgment, decree, adjudication, order, or part thereof of a lower court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal.

(c) Content of the Notice of Appeal

(1) Generally

(A)

The notice of appeal shall designate:

(i) the party or parties taking the appeal; and

(ii) in civil cases, the judgment, decree, adjudication, or separately appealable order from which the appeal is taken.

(B)

The notice of appeal need not designate prejudgment orders that are appealable as part of the judgment, decree, or adjudication designated in the notice of appeal.

(C)

An appellant may designate only part of a judgment, decree, adjudication, or separately appealable order by expressly stating that the notice of appeal is so limited.

(D)

In a civil case, the notice of appeal encompasses the final judgment, regardless of whether that judgment is set out in a separate document under Massachusetts Rule of Civil Procedure 58, if the notice designates:

(i) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or
(ii) an order described in Rule 4 (a) (2).

(2) Content of the Notice of Appeal in Child Welfare Cases

In child welfare cases, the notice of appeal and any request for a transcript, if required, shall be signed by the person or persons, or by counsel for the entity, taking the appeal; however, if the appellant is a minor, the notice and request shall be signed by the minor's counsel. A notice of appeal that is not so signed shall not be accepted for filing by the clerk.

(3) Effect of Minor Defects in the Notice of Appeal

An appeal should not be dismissed for minor defects, such as

(A) informality of form or title of the notice of appeal;
(B) failure to name a party whose intent to appeal is otherwise clear from the notice; or
(C) a technical error in how the judgment, decree, adjudication, or separately appealable order is identified, if it is otherwise clear from the notice what is being appealed.

(d) Service of the Notice of Appeal

The clerk of the lower court shall serve notice of the filing of a notice of appeal by transmitting a copy thereof to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the party. The clerk shall note on each copy served the date on which

the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or counsel. The clerk shall note in the docket the names of the persons to whom copies are transmitted, and the date of transmission.

(e) Change of Counsel on Appeal in Criminal and Certain Non-criminal Cases

If the defendant in a criminal case, or any party in any other proceeding, excluding child welfare cases, in which counsel is required to be made available to such party pursuant to Supreme Judicial Court Rule 3:10, was represented by counsel at trial, the trial court counsel shall continue to represent that party on appeal until an appearance is filed by substitute counsel, if such assignment of counsel is made by the Committee for Public Counsel Services. In such proceedings, assigned trial court counsel shall, no later than the day on which the notice of appeal is filed, notify the Committee for Public Counsel Services that appellate counsel should be assigned. Assigned appellate counsel shall promptly file a notice of appearance in the trial court, following which trial court counsel may file a notice of withdrawal.

(f) Appointment of Appellate Counsel in Child Welfare Cases

(1)

Subject to the provisions of Rule 10(d), any party to a child welfare case in which counsel was appointed pursuant to Supreme Judicial Court Rule 3:10 and who was represented by counsel at trial shall continue to be represented by that counsel on appeal until either the lower court has appointed counsel for appellate purposes and an appearance has been filed by appellate counsel or the lower court has denied a motion to appoint counsel for appellate purposes.

(2)

Lower court counsel shall, on the day upon which the signed notice of appeal is filed, file, and request a hearing on, a motion to allow reasonable costs associated with the appeal in the lower court. At the same time, if lower court counsel is not appellate certified by the Committee for Public Counsel Services, counsel shall also file, and request a hearing on, a motion to appoint counsel for appellate purposes in the lower court. Subject to the provisions of Supreme Judicial Court Rule 3:10, § 7, lower court counsel shall continue to represent the party at all lower court proceedings.

(3)

If the motion to appoint counsel for appellate purposes is allowed, the Committee for Public Counsel Services shall be assigned to provide representation according to the procedures established in Supreme Judicial Court Rule 3:10.

(4)

If counsel has not filed a motion to withdraw appearance in the lower court, or counsel has filed a motion to withdraw but the motion has not been allowed by the lower court prior to the date that the lower court transmits to the appellate court the notice of assembly of the record pursuant to Rule 9, lower court counsel will be designated as counsel in the appellate court. Any motion to withdraw filed thereafter shall comply with Rule 10(d).

Rule History

Amended May 15, 1979, effective July 1, 1979; amended May 29, 1986, effective July 1, 1986; amended July 28, 1999, effective September 1, 1999; amended October 31, 2018, effective March 1, 2019; amended effective March 2, 2023.

Reporter's Notes

(2023)

Spurred by the 2021 amendments to Federal Rule of Appellate Procedure 3 (c), which clarified and liberalized the requirements for the contents of a notice of appeal, the committee examined, and proposed revisions to, Rule 3 (c). Those revisions are consistent with the goals of liberalization and clarification reflected in the federal rules, but the language employed is not in all cases identical to the Federal rule for reasons particular to State court procedure. The amendments merely clarify what needs (and does not need) to be included in the notice of appeal. The amendments do not expand what is appealable or alter how or when a judgment, decree, adjudication, or order must be appealed. Similarly, the amendments do not change the requirement that any issues a party would like considered on appeal must be briefed. It is the role of the briefs, not the notice of appeal, to raise the issues on appeal.

Former subparagraph (c) (1) has been broken into four new subparagraphs. Subparagraphs (c) (1) (A) – (c) (1) (C) apply to all cases (criminal and civil). Subparagraph (c) (1) (D) applies only to civil cases.

Subparagraphs (c) (1) (A) and (c) (1) (B). Subparagraph (c) (1) (A) reflects that the notice of appeal should be a simple document that provides notice a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing and what is being appealed.

To make clear it is not necessary to designate each and every order the appellant may wish to challenge on appeal, former Rule 3 (c) (1) is renumbered as Rule 3 (c) (1) (A) and amended to require the designation of ""the judgment, decree, adjudication, or separately appealable order from which the appeal is taken." The phrase "or part thereof" is deleted. Designation of the judgment, decree, or adjudication now encompasses prior interlocutory orders that become appealable only upon entry of such final judgment, decree, or adjudication. This principle, sometimes referred to as the merger principle, is a corollary of the final judgment rule: a party cannot appeal from most interlocutory orders, but must await final judgment, and only then obtain review of interlocutory orders. The reference to "separately appealable order," as opposed to merely "order," is intended to clarify that each order appealable upon final judgment need not be listed in the notice. Only those orders from which an immediate appeal is allowed separate and apart from final judgment need be listed—for example, a preliminary injunction order, see, e.g., G. L. c. 231, § 118; an appeal subject to the doctrine of present execution, see, e.g., Kent v. Commonwealth, 437 Mass. 312, 316 (2002) (interlocutory orders that fall within the doctrine of present execution are treated as final for purposes of appeal); or certain other interlocutory orders that are separately appealable, see, e.g., G. L. c. 184, § 15 (d).

Similarly, subparagraph (c) (1) (B) has been added to expressly state, "[t]he notice of appeal need not designate prejudgment orders that are appealable as part of the judgment, decree, or adjudication designated in the notice of appeal." This language differs slightly from the equivalent amendment to Fed. R. App. P. 3 (c) (4), which states the notice "encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. . .." Because the concept of merger may create confusion in Massachusetts practice, particularly in appeals from certain types of judgments and orders arising out of the Probate and Family Court and the Juvenile Court, Rule 3 (c) (1) (B) does not use the term "merge." Instead, it uses plain language to state that prejudgment orders that are appealable as part of the judgment need not be designated separately in a notice of appeal designating a properly appealable judgment, decree, or adjudication.

Subparagraph (c) (1) (C). There are circumstances in which an appellant may deliberately choose to limit the scope of the notice of appeal, and wish to convey this choice to the other parties. Thus, Rule 3 (c) (1) (C) has been added to allow an appellant to designate only part of a judgment, decree, adjudication, or separately appealable order, as long as the appellant does so expressly in the notice of appeal. This addition to Rule 3 (c) generally tracks the equivalent Federal rule, but omits the second sentence of the Federal rule, which simply restates the same concept in a different way. See Fed. R. App. P. 3 (c) (6) ("Without such an express statement, specific

designations do not limit the scope of the notice of appeal."). This omission should not be interpreted as a variance from the substance of the Federal rule.

Subparagraph (c) (1) (D). Rule 3 (c) (1) (D), which tracks Fed. R. App. P. 3 (c) (5), has been added to address some potential traps for the unwary in civil cases that occur when a case is decided by a series of orders or when post-judgment motions are filed. The first issue may arise when, for example, some claims are dismissed for failure to state a claim under Mass. R. Civ. P.12 (b) (6) and then, much later in the case, the remaining claims are resolved on summary judgment. The order ruling on the motion for summary judgment, because it resolves all of the remaining claims, is a final judgment, an appeal from which confers appellate jurisdiction to review the earlier order on the motion to dismiss. But if a notice of appeal describes the second order not as a final judgment but as an order granting summary judgment, some courts might limit appellate review to the summary judgment and refuse to consider a challenge to the earlier motion to dismiss order. This new rule has been added to eliminate that trap for the unwary and clarify the notice of appeal encompasses the earlier order.

Similarly, if a trial court complies with the requirement under Mass. R. Civ. P. 58 that a separate document with a final judgment be entered following an order that resolves all remaining claims in a case, and the notice of appeal designates that order rather than the separate document, some courts might limit appellate review to that order and refuse to consider a challenge to an earlier interlocutory decision that would otherwise be reviewable as part of an appeal of the final judgment. This creates a trap for all but the wariest, because when the trial court issues the order disposing of all remaining claims, a litigant may not know whether the trial court will ever enter the separate document required by Mass. R. Civ. P. 58.

Rule 3 (c) (1) (D) (i) has therefore been added to clarify that a notice of appeal designating the order resolving all remaining claims and the rights and liabilities of all remaining parties will be treated as having designated a final judgment for purposes of the appeal, regardless of whether that judgment is set out in a separate document.

Second, Rule 3 (c) (1) (D) (ii) is intended to resolve another trap for the unwary that may occur when a party files a post-judgment motion that tolls the time to appeal the judgment under Rule 4 (a) (2) and then notices an appeal of the order on the post-judgment motion without noticing an appeal of the judgment. Some courts treat such a notice as limited to the postjudgment order, rather than as bringing the judgment itself before the appellate court for review.

To reduce the unintended loss of appellate rights in this situation, the amendment clarifies that a notice of appeal designating an order on a post-judgment motion listed in Rule 4 (a) (2) will also encompass the final judgment. This amendment does not alter Rule 4 (a) (3)'s requirement that a

new notice of appeal be timely filed following entry of the order disposing of the last remaining post-judgment motion.

Rule 3 (c) (3) has been added to clarify that an appeal should not be dismissed for minor defects in the notice of appeal. The amended rule uses "should" rather than "must," which is used in Fed. R. App. P. 3 (c) (7), to allow the appellate court to rule otherwise in unusual circumstances. Rule 3 (c) (3) clarifies that an appeal should not be dismissed for minor defects such as informality of form or title, or omission of an appealing party's name, or a technical error in how the appealed judgment, decree, adjudication, or separately appealable order is identified, so long as it is clear who is appealing and what is being appealed. The amended rule does not provide an exhaustive list and there may be other minor defects in a notice of appeal that should not result in dismissal.

(2019)

Rule 3(a). The phrase “with service upon all parties” was added to the first sentence to clarify the appellant’s duty to serve all other parties when filing a notice of appeal. Although the clerk of the lower court is still required to serve notice on the parties pursuant to Rule 3(d), this amendment is consistent with Mass. R. Civ. P. 5(a) and Mass. R. Crim. P. 32(a), which require documents (other than those allowed to be filed ex parte) filed in court to be served on all other parties.

Rule 3(b). The title of this subdivision was revised from “Joint or Consolidated Appeals” to “Appeals by Multiple Parties.” The designation of parties proceeding on appeal as a single appellant is most often made by the appellate court when the appeal is docketed in the appellate court, and not by the lower court after the notice of appeal is filed there. Accordingly, language relating to consolidated appeals and authorizing parties to proceed on appeal as a single appellant was relocated to Rules 10(a)(5) and (6). The first sentence of Rule 3(b) was revised to clarify that in addition to a judgment or order, an appeal may be taken from a “decree, adjudication . . . or part thereof.” The addition of these terms makes this subdivision consistent with other parts of the Rules. See Rules 3(c), 4(a)(1), and 4(b)(1).

Rule 3(c) was reformatted to clarify the required content of a notice of appeal. Rule 3(c)(1) applies “generally” to civil and criminal cases and Rule 3(c)(2) applies to child welfare cases. Because the requirements related to a notice of appeal in a child welfare case are different, a separate paragraph addressing those particular requirements clarifies the rule.

Regarding the signing of the notice of appeal in a child welfare case where the appellant is not a minor, the reference is amended from “party or parties taking the appeal,” to “person or persons, or by counsel for the entity, taking the appeal,” to be consistent with the new definition of “party” in Rule 1(c), and because the term “person” ordinarily does not apply to government entities, such as the Department of Children and Families, which may take appeals in child welfare cases and which can act only through counsel.

Rule 3(d) was updated to replace "mailing" with "transmitting," to accommodate the fact that the lower court may have procedures by which the clerk transmits electronic notice. See Mass. R. Civ. P. 77(d)(2).

Rule 3(e), governing the change of counsel on appeal in criminal and certain non-criminal cases, was amended to change the procedure for counsel to withdraw an appearance upon the filing of a notice of appeal in the common situation that the Committee for Public Counsel Services (CPCS) assigns substitute counsel to handle a party's appeal. The prior procedure required the defendant's counsel to file a motion to withdraw that required action by the trial court before notice was made to CPCS to provide appellate representation. The new procedure requires the defendant's counsel with an appearance in the trial court to notify CPCS no later than the day on which the notice of appeal is to be filed that appellate counsel should be assigned. CPCS will then assign appellate counsel, who is required to file a prompt notice of appearance in the trial court. After the appellate attorney has entered the appearance, the prior counsel of record in the trial court may file a notice of withdrawal.

Rule 3(f)(4) is an entirely new paragraph that explains the existing practices that occur when counsel who has been active in the lower court either has not filed a motion to withdraw appearance in the lower court or when such a motion has been filed and not acted upon prior to the lower court's issuance of the notice of assembly of the record on appeal. In such instances, the lower court counsel's appearance in the case will continue and that counsel will be designated as active counsel in the appellate court. Rule 3(f)(4) includes a reference to new Rule 10(d), which governs motions to withdraw appearance after the lower court's issuance of the notice of assembly and docketing of an appeal in the appellate court.

The addition of Rule 3(f)(4) is intended to clarify that counsel listed as active on the lower court docket at the time the lower court issues the notice of assembly per Rule 9 will be listed as active counsel on the docket of the appellate court, and encourage such counsel to file a prompt notice of withdrawal in the lower court. This is consistent with Mass. R. Civ. P. 11(d) and Mass. R. Prof. C. 1.16(c). Rule 3(f)(4) also clarifies that, after an appeal is docketed in an appellate court, a motion to withdraw must be filed in the appellate court, not the lower court.

The inclusion of this longstanding practice into the Rules will reduce confusion on the part of attorneys as to why their appearance was entered on the appellate court docket in circumstances where the attorney was retained or assigned as lower court counsel only, and clarifies that a motion to withdraw appearance should be filed in the appellate court once that court has jurisdiction of a case. See Rule 10(d).

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1999)

[Rule 3(c), (e), and (f)] The 1999 amendments to Appellate Rule 3 were part of a comprehensive set of amendments to the Appellate Rules (Rules 1, 3, 4, 8, and 10) that had been proposed by the Supreme Judicial Court Committee on Appeals of Child Welfare Cases. The purpose of the 1999 amendments is described in the 1999 Reporter's Notes to Appellate Rule 1(c).

Appellate Rule 3(c) has been amended to require that in child welfare cases, the notice of appeal must be signed by the party or parties taking the appeal unless the appellant is the minor who is the subject of the action. The clerk is directed not to accept an appeal that is not so signed. The purpose of this change is to eliminate the taking of an appeal on behalf of an absent and disinterested client.

The amendment to Appellate Rule 3(f) make it clear that until appellate counsel files an appearance, trial counsel is obligated to continue representation of the client. Even after appellate counsel has filed an appearance, trial counsel will continue to represent the party at all proceedings in the trial court.

(1979)

[Rule 3(a), (c), and (e)] The second paragraph of subdivision (a) is amended by the addition of a reference to Mass. R. Crim. P. 22, "Objections," to clarify that a party need not claim an exception to an interlocutory order adverse to his position to preserve his right to have that order subsequently reviewed on appeal.

Subdivision (b), regulating joint or consolidated appeals, is consistent with prior criminal appellate practice.

Subdivision (c) is amended to reflect the fact that in a civil case, the notice of appeal must designate the judgment, order, or part thereof which is appealed from. It would also be appropriate in an interlocutory appeal in a criminal case for the notice of appeal to designate the order from which an appeal is being taken (e.g., denial of motion to suppress, grant of motion to

dismiss), but this is not required by the rule because there is seldom any question about the matter being appealed.

General Laws, c. 278, § 33B (St.1955, § 352, § 2) formerly provided that the clerk was to notify the District Attorney of a claim of appeal "forthwith." Subdivision (d) is more explicit in setting out the manner of notice and will require notification of co-defendants, if any, when a notice of appeal is filed.

Subdivision (e), "Change of Counsel on Appeal in Criminal Cases," is new and addresses the continuing responsibility of the trial attorney to provide assistance to a client beyond entry of final judgment in the trial court. See ABA Standards Relating to Criminal Appeals 21-2.2(a)(2d ed., Approved Draft, 1978). This subdivision seeks to avoid a hiatus in legal representation during a critical period when the defendant has questions as to the meaning and effect of conviction and the option of whether to appeal. ABA Standards, supra, commentary at 10.

In Pires v. Commonwealth, Mass.Adv.Sh. [1977] 2601, the Supreme Judicial Court held that a lawyer has a professional obligation to his client which goes beyond the trial of the case. The court adopted the provisions of the American Bar Association Project on Standards for Criminal Justice as the appropriate measure of the responsibility of counsel. Standard 8.2 of the Defense Function (Approved Draft 1971), provides:

> "8.2 Appeal. (a) After conviction, the lawyer should explain to the defendant the meaning and consequences of the court's judgment and his right of appeal. The lawyer should give the defendant his professional judgment as to whether there are meritorious grounds for appeal and as to the probable results of an appeal. He should also explain to the defendant the advantages and disadvantages of an appeal. The decision whether to appeal must be the defendant's own choice. (b) The lawyer should take whatever steps are necessary to protect the defendant's right of appeal."

(1973)

An appeal is initiated by filing in the lower court a notice of appeal, within 30 days following the order or judgment appealed from. If the Commonwealth or any office or agency thereof is a party, however, the appeal time is extended to 60 days. After the notice of appeal has been filed, the clerk of the lower court notifies all other parties by mail of the notice's having been filed. It is the date of the filing, however, not the date of the notice, which controls the timeliness of the appeal.

RULE 4: APPEAL - WHEN TAKEN

(a) Appeals in Civil Cases

(1) Time for Filing a Notice of Appeal

(A) Generally

In a civil case, unless otherwise provided by statute, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court

(i) within 30 days of the date of the entry of the judgment, decree, appealable order, or adjudication appealed from; but
(ii) if the Commonwealth or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry, except
(iii) in child welfare cases, in which the notice of appeal shall be filed within 30 days from the date of the entry of the judgment, decree, appealable order, or adjudication.

(B) Mistaken Filing in the Appellate Court

If a notice of appeal is mistakenly filed in an appellate court, the clerk of such appellate court shall note the date on which it was received and transmit it to the clerk of the lower court from which the appeal was taken and it shall be deemed filed in such lower court on the date so noted.

(C) Multiple Appeals

If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within 14 days of when the first notice becomes effective pursuant to Rule 4(a)(2)(B), or within the time otherwise prescribed by this rule, whichever period last expires.

(2) Effect of Postjudgment Motion

(A) Applicable Motions

If a motion is made or served in a timely manner under the Massachusetts Rules of Civil Procedure and filed with the lower court by any party, the time to file an appeal runs for all parties from the entry of the order disposing of the last remaining motion:

(i) for judgment under Rule 50(b);
(ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

(iii) to alter or amend a judgment under Rule 59 or for relief from judgment under Rule 60(b), however titled, but only if either motion is served within 10 days after entry of judgment; or

(iv) under Rule 59 for a new trial.

(B) Notice of Appeal Filed Before Disposition of Motions

If a party files a notice of appeal from an underlying judgment, decree, appealable order, or adjudication before the court disposes of any motion listed in Rule 4(a)(2)(A), the notice becomes effective—but only as to such judgment, decree, appealable order, or adjudication—upon the entry of the order disposing of the last such remaining motion.

(C) Appeal After Disposition of Postjudgment Motion

A party intending to challenge an order disposing of any motion listed in Rule 4(a)(2)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal, within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(b) Appeals in Criminal Cases

(1)

In a criminal case, unless otherwise provided by statute or court rule, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within 30 days after entry of the judgment, appealable order, or adjudication appealed from, or entry of a notice of appeal by the Commonwealth, or the imposition of sentence, whichever comes last.

(2)

If a motion for a new trial is filed under Massachusetts Rules of Criminal Procedure 25 (b) (2) or 30 within 30 days of the verdict, finding of guilt, judgment, adjudication, or imposition of sentence, the period to appeal shall not terminate until 30 days from entry of the order disposing of the motion. If a motion is filed for reconsideration within 30 days of entry of the order disposing of the motion, the period to appeal shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

(3)

If a motion is filed for reconsideration within 30 days of an appealable order, judgment, or adjudication, the period to appeal from the decision for which reconsideration was sought shall not terminate until 30 days from entry of the order disposing of the motion for reconsideration.

(c) Extension of Time for Filing Notice of Appeal

Upon a showing of excusable neglect, the lower court may extend the time for filing the notice of appeal or notice of cross appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with service upon all other parties.

(d) Appeal by a Self-Represented Party Confined in an Institution

If an institution has a system designed for legal mail, a self-represented party confined there must use that system to receive the benefit of this rule. If such party files a notice of appeal in either a civil or criminal case, the notice is timely if deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a signed certificate in compliance with Rule 13(a)(1)(B) setting out the date of deposit. If the notice of appeal is not received by the last day for filing, the certificate shall give rise to a presumption of timely filing provided it shows compliance with this rule. Failure to attach the certificate shall not of itself render the notice of appeal invalid or untimely, and the lower court may permit the later filing of a certificate. If such party files the first notice of appeal in a civil case under Rule 4(d), the 14-day period provided in Rule 4(a)(1)(C) for another party to file a notice of appeal runs from the date when the lower court enters the first notice, or the date when the first notice becomes effective pursuant to Rule 4(a)(2)(B), or the date otherwise prescribed by this rule, whichever is later.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended July 20, 1984, effective January 1, 1985; amended June 7, 1985, effective July 1, 1985; amended July 28, 1999, effective September 1, 1999; amended March 6, 2000, effective April 3, 2000; amended March 22, 2013, effective May 1, 2013; amended October 31, 2018, effective March 1, 2019; amended February 22, 2022, effective April 1, 2022; amended September 3, 2025, effective October 1, 2025.

Reporter's Notes

(2025)

Rule 4(a) has been reformatted to conform to the format of other recent rule changes. The rule has also been amended substantively to eliminate a trap for the unwary in former Rule 4(a)(3), which had provided that a notice of appeal from an underlying judgment filed before the disposition of

timely postjudgment motions "shall have no effect." To preserve an appeal from the underlying judgment, an appellant was required to file a new notice of appeal after the disposition of the last such motion. That rule has been stricken and replaced by new Rule 4(a)(2)(B) and (C). Under the new rule, a notice of appeal filed before the disposition of timely postjudgment motions will become effective on disposition of the last such motion. However, such a notice is effective to appeal only from the underlying judgment; any party wishing to appeal from an adverse ruling on one or more of the postjudgment motions must file a notice of appeal or amended notice of appeal within the designated time following the disposition of the last such motion. The new rule closely tracks the language of the cognate Federal rule, Fed. R. A. P. 4(a)(4)(B)(i) and (ii).

Rule 4(a)(1)(C)—formerly the last sentence of Rule 4(a)(1)—and Rule 4(d) have also been amended to refer to and accommodate the change in Rule 4(a)(2)(B).

(2022)

Rule 4(b) was amended in 2022, by adding subdivision (b)(3), to reflect the common-law rule that the timely filing of a motion for reconsideration in a criminal case tolls the time period for a party to file a notice of appeal from a ruling on a motion filed under Rule 25(b)(2) or 30, or from another appealable order, judgment, or adjudication that is the subject of the motion for reconsideration. See Commonwealth v. Lewis, 57 Mass. App. Ct. 931, 931-932 (2003) (“timely motion to reconsider, generally one that is filed within thirty days of the action the moving party wants reconsidered, extends the time for filing a notice of appeal to thirty days after the motion to reconsider has been acted upon”), citing Commonwealth v. Powers, 21 Mass. App. Ct. 570, 573-574 (1986) and Commonwealth v. Montanez, 410 Mass. 290, 294 & n.4 (1991). See also Commonwealth v. Jordan, 469 Mass. 134, 147 n.24 (2014).

A timely-filed motion for reconsideration generally extends the time for filing a notice of appeal only for the appealable order, judgment, or adjudication for which reconsideration was sought. For example, if, five months after the verdict, the defendant moved for a new trial under Mass. R. Crim. P. 30, and the motion was denied, and then, within 30 days of that denial, moved for reconsideration, unsuccessfully, the defendant would have 30 days from the denial of the motion for reconsideration to appeal from the rulings on the Rule 30 motion and the motion for reconsideration, but not from the underlying verdict because more than 30 days had elapsed before the defendant filed the Rule 30 motion. On the other hand, if the defendant filed the Rule 30 motion within 30 days of the verdict, and filed a timely, but unsuccessful, motion for reconsideration, the defendant would have 30 days from entry of the order resolving the motion for reconsideration to appeal from: (1) the verdict; (2) the decision on the motion for a new trial; and (3) the ruling on the motion for reconsideration.

Consistent with the rule for civil cases, the addition of subdivision (b)(3) is not intended to provide a party with multiple opportunities to extend the time period to claim an appeal by filing repeated

motions for reconsideration of the same appealable order, judgment, or adjudication. See Mass. R. A. P. 4(a)(2), Reporter's Notes (2013). The only circumstance when a motion for reconsideration extends the time for filing an appeal from an appealable order, judgment, or adjudication is when the motion is filed within 30 days of entry of the appealable order, judgment, or adjudication that was the subject of reconsideration. Any motion for reconsideration filed beyond that 30 day period has no tolling effect.

(2019)

Rule 4 continues to set forth the time period when a notice of appeal must be filed.

While Rules 4(a) and 4(b) continue to govern, respectively, civil cases and criminal cases, the 2019 amendments divided these subdivisions to improve their clarity by distinguishing among their separate topics. Rules 4(a)(1) and 4(b)(1) govern the time period to file a notice of appeal, and Rules 4(a)(2), 4(a)(3), and 4(b)(2) govern the tolling of the time period.

Rules 4(a)(1) and 4(b)(1) continue to specify the types of lower court dispositions that may be appealed, but were amended to add language consistent with Rule 3(c). Rule 3(c), which governs the contents of a notice of appeal, specifies that the notice of appeal shall "designate the judgment, decree, adjudication, order, or part thereof appealed from," while the prior Rule 4(a) referenced only "judgment." Accordingly, Rule 4(a)(1) (governing civil cases) was amended to include "judgment, decree, appealable order, or adjudication." Similarly, Rule 4(b)(1) (governing criminal cases) was amended to provide that a notice of appeal may be filed from a "judgment, appealable order, or adjudication" in addition to the other categories stated in Rule 4(b)(1). Importantly, in both Rules 4(a)(1) and 4(b)(1), the word "appealable" was added before the word "order" to clarify the lower court dispositions from which an appeal may be taken. Not every "order" may be appealed. An "appealable order" includes those orders authorized by statute, rule, or case law as immediately appealable. These 2019 amendments ensure consistency and completeness and were not intended to alter the types of lower court dispositions that are appealable.

As set forth in Rule 4(a)(2), certain motions toll the time period to claim an appeal. Prior to these amendments, the time period for filing a notice of appeal was tolled when a "timely motion under the Massachusetts Rules of Civil Procedure is filed in the lower court by any party." However, the pertinent Massachusetts Rules of Civil Procedure use different terms, including "filed," "served," and "made," to determine whether a post-judgment motion is timely. See Mass. R. Civ. P. 50(b) ("serve"), 52(b) ("made"), 59(b) ("served"), 59(e) ("served"), and 60(b)("made"). Therefore, in 2019, Rule 4(a)(2) was amended to include the phrase "made or served in a timely manner" to clarify that the time period to file a notice of appeal is tolled when a party timely complies with the requirements established for bringing a post-judgment motion under the applicable Massachusetts Rules of Civil Procedure, including that the motion "is filed."

The word “filed” is retained in Rule 4(a)(2) to clarify that, regardless of the language used in the applicable Massachusetts Rules of Civil Procedure, the post-judgment motion must actually be filed with the lower court to toll the time period to file a notice of appeal. This phrasing is intended to address the situation where a party serves a post-judgment motion in compliance with a lower court standing order or rule, such as Superior Court Rule 9A, but then never files the motion with the lower court. In that situation, the time period to file a notice of appeal is not tolled because the motion was only served and not filed. Finally, the last clause of the prior sentence was relocated and revised slightly to clarify that the time for filing a notice of appeal for all parties begins on the date when the lower court enters the order disposing of the last remaining motion enumerated in the rule.

Rule 4(a)(2)(C) was amended to clarify that only a motion “for relief from judgment under Rule 60(b)” tolls the time period to file a notice of appeal. The 2013 amendments’ inclusion of “relief from judgment under Rule 60, however titled” was intended to encompass only Mass. R. Civ. P. 60(b) motions since Mass. R. Civ. P. 60(a) does not reference or provide for “relief from judgment.” Instead, a Mass. R. Civ. P. 60(a) motion allows the court to correct certain clerical mistakes arising from oversight or omission. A Mass. R. Civ. P. 60(a) motion is intended to correct the record to reflect the original adjudication and may not be used to alter the substantive rights of the parties. See 1973 Reporter’s Note to Mass. R. Civ. P. 60. Moreover, the phrase “however titled,” added in 2013, was not intended to expand the scope of the rule to include Mass. R. Civ. P. 60(a) motions. See 2013 Reporter’s Note to Rule 4. Unlike Fed. R. App. P. 4(a)(4)(A)(vi), which tolls the time period to file a notice of appeal upon a timely motion “for relief under Rule 60[,]” which includes both a Fed. R. Civ. P. 60(a) and a 60(b) motion, the prior Massachusetts rule, as amended in 2013, more narrowly tolled the time period only where there was a timely motion for “relief from judgment under Rule 60, however titled.” However, the text of the rule after the 2013 amendment could inadvertently cause some litigants to believe, incorrectly, that a Mass. R. Civ. P. 60(a) motion would toll the time period to file a notice of appeal. Accordingly, in 2019, Rule 4(a)(2)(C) was amended to clarify that only a Mass. R. Civ. P. 60(b) motion, and not a Mass. R. Civ. P. 60(a) motion, will toll the time period to file a notice of appeal.

Rule 4(a)(3) includes the requirement of prior Rule 4(a) that a notice of appeal filed before the disposition of any post-judgment motion listed in Rule 4(a)(2) has no effect, and that a new notice of appeal must be filed. The provision is revised to clarify that the requirement applies to motions that are “timely.” It further clarifies that entry in the lower court of the order disposing of the last remaining post-judgment motion begins the time period for filing a new notice of appeal.

The final revision to Rule 4(a) is the deletion of the reference to fees for filing a notice of appeal. The only existing fees required for the filing of a notice of appeal are in the Appellate Divisions of the District Court and Boston Municipal Court, which are not governed by these Rules. Deleting reference to such fees removes potential for confusion.

The phrase “whichever comes last” was added at the end of Rule 4(b)(1) to clarify that the time for filing a notice of appeal runs from the happening of the last occurrence enumerated in the rule.

Rule 4(b)(2) was amended to clarify that a motion filed pursuant to Mass. R. Crim. P. 25(b)(2) terminates the time for filing a notice of appeal for the moving party. Like a motion filed pursuant to Mass. R. Crim. P. 30, a motion filed pursuant to Mass. R. Crim. P. 25(b)(2) calls the judgment of conviction into question. If a motion filed pursuant to either rule is allowed, the conviction is vacated and an appeal by the moving party is unnecessary. If the motion is denied, the full time period fixed by Rule 4(b)(1) commences to run from the date of entry of the order denying the motion.

Rule 4(c) was amended to specifically state that service upon all other parties is required when a party seeks by motion an extension of time for filing a notice of appeal.

Rule 4(d) is a new subdivision that incorporates the so-called “inmate mailbox rule” concerning the filing of a notice of appeal by self-represented parties confined in an institution. Rule 4(d) is intended to address the concerns highlighted by the Supreme Judicial Court in Commonwealth v. Hartsgrove, 407 Mass. 441, 445 (1990), as to the limitations of a person confined in an institution to effectuate the “mailing” of a document on a certain day. The subdivision is modeled on Fed. R. App. P. 4(c), with slight changes.

In Commonwealth v. Hartsgrove, 407 Mass. 441, 445 (1990), the Supreme Judicial Court relied on the United States Supreme Court’s interpretation of Fed. R. App. P. 4 in Houston v. Lack, 487 U.S. 266, 270-272 (1988), to hold that a self-represented party confined in an institution would be deemed to have filed a notice of appeal with the trial court, in accordance with Mass. R. App. P. 4(b), upon the inmate having deposited the notice of appeal in the prison’s institutional mailbox. The Supreme Judicial Court observed that “[t]he Supreme Court’s reasoning bears quoting at length”:

> The situation of prisoners seeking to appeal without the aid of counsel is unique. Such prisoners cannot take the steps other litigants can take to monitor the processing of their notices of appeal and to ensure that the court clerk receives and stamps their notices of appeal before the 30-day deadline. Unlike other litigants, pro se prisoners cannot personally travel to the courthouse to see that the notice is stamped “filed” or to establish the date on which the court received the notice. Other litigants may choose to entrust their appeals to the vagaries of the mail and the clerk’s process for stamping incoming papers, but only the pro se prisoner is forced to do so by his situation. ... [T]he pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control or supervise and who may have every incentive to delay. No matter how far in

> advance the pro se prisoner delivers his notice to the prison authorities, he can never be sure that it will ultimately get stamped "filed" on time. And if there is a delay the prisoner suspects is attributable to the prison authorities, he is unlikely to have any means of proving it, for his confinement prevents him from monitoring the process sufficiently to distinguish delay on the part of prison authorities from slow mail service or the court clerk's failure to stamp the notice on the date received. Unskilled in law, unaided by counsel, and unable to leave the prison, his control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access-the prison authorities-and the only information he will likely have is the date he delivered the notice to those prison authorities and the date ultimately stamped on his notice.

Id. at 445–446, quoting Houston v. Lack, 487 U.S. at 270-272. The Supreme Judicial Court held that the filing of the notice of appeal should be deemed to have occurred upon the inmate's relinquishment of control of the notice of appeal to the prison authorities, and not on the date the clerk received it. Id. at 444.

Because Hartsgrove concerned a notice of appeal in a criminal matter, the court did not reach the question of its applicability to civil matters. Although the Supreme Judicial Court in Hartsgrove did not construe the word "inmate," some Federal circuit courts of appeal have construed the word "inmate" to refer to civilly committed persons as well as prisoners. See Brown v. Taylor, 829 F.3d 365 (5th Cir. 2016); Parrish v. McCulloch, 481 Fed. Appx. 254, 254 (7th Cir. 2012); Jones v. Blanas, 393 F.3d 918, 926 (9th Cir. 2004). The committee agreed with this approach and concluded civilly committed persons were within the intended scope of the rule announced in Hartsgrove. Accordingly, the language of the 2019 amendment adding Rule 4(d) both incorporates the Supreme Judicial Court's decision in Hartsgrove and extends its application to the filing of notices of appeal by all self-represented persons confined in an institution, including civilly committed persons. See G.L. c. 123, §§ 1, 7, 35; G.L. c. 123A, § 12. This is consistent with Fed. R. App. P. 4(c). Whether the case involves a criminal or civil appeal, the concerns as to the limitations placed on persons confined in an institution regarding access to mail are the same, and thus Rule 4(d) applies equally to both types of cases.

Rule 4(d) provides that the notice of appeal is to be deemed filed on the date the document is deposited for mailing in the institution's internal mailing system. The subdivision requires a party to show timely filing by including a certificate in compliance with Rule 13(a)(1)(B). This certificate creates a presumption of timely filing. However, not including this certificate will not itself render the notice of appeal invalid or untimely because Rule 4(d) permits the lower court to allow later filing of the certificate. Unlike Fed. R. App. P. 4(c)(1)(A), this subdivision requires only that the party's certificate set forth the date of deposit, and does not include the further requirement that

the party also state that first-class postage has been prepaid because some Massachusetts institutions affix postage after the item leaves the inmate or civilly committed person's hands.

Rule 4(d), consistent with Fed. R. App. P. 4(c)(2), establishes that in a civil case, the 14-day time period for another party to file a notice of appeal begins when the filing of the first notice of appeal is docketed in the lower court.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2013)

The 2013 amendment to Appellate Rule 4(a) changed item (3) to provide that, if served within ten days after entry of judgment, a motion under Mass. R. Civ. P. 59 to alter or amend a judgment or a motion under Mass. R. Civ. P. 60 for relief from judgment will toll the time period to claim an appeal from the underlying judgment.

The language "however titled" in the amended version is intended to make clear that the substance and not the title of the motion should control. See Pentucket Manor Chronic Hospital, Inc. v. Rate Setting Commission, 394 Mass. 233, 235-236 (1985). Thus a post-judgment motion under either Mass. R. Civ. P. 59 or 60, whether titled as a motion to alter, amend, or vacate, for relief from judgment, or for reconsideration, if served within ten days, will toll the time period to file a notice of appeal.

The 2013 amendment to Mass. R. A. P. 4(a) was intended to address the confusion that sometimes arose when a post-judgment motion, denominated a motion for "reconsideration," was served within ten days after entry of judgment. Since the text of the Massachusetts Rules of Civil Procedure does not refer to motions for reconsideration, a motion for reconsideration, if served within ten days of judgment, could have been treated as a motion under Rule 59 (for new trial or to alter or amend judgment) or as a motion under Rule 60(b) (for relief from judgment). If treated as a Rule 59 motion, the motion for reconsideration would have operated to toll the time period to claim an appeal. If treated as a Rule 60(b) motion, the motion for reconsideration would not have served to toll the time period to claim an appeal. Mass. R. A. P. 4(a), as it existed prior to the 2013 amendment. The 2013 amendment to Mass. R. A. P. 4(a) eliminates this potential for confusion by

tolling the time period to claim an appeal where a motion for reconsideration is served within ten days after entry of judgment.

This amendment is not intended to provide a litigant with multiple opportunities to extend the time period to claim an appeal. Assume that the defendant serves a motion for relief from judgment within ten days of entry of judgment, thereby staying the time period to claim an appeal from the judgment. Two months later, the judge enters an order denying the motion for relief. Entry of that order starts the clock running to file a notice of appeal. If the defendant moves for reconsideration of the order denying relief from judgment, the motion for reconsideration should have no effect on the time period to claim appeal from the original judgment.

A 2009 amendment to Rule 4(a)(4)(a) of the Federal Rules of Appellate Procedure similarly recognized that a motion for relief from judgment under Rule 60 tolls the time period to file a notice of appeal.

(2000)

[Rule 4(b), first paragraph] Appellate Rule 4(b) was amended in 2000 in light of the Supreme Judicial Court's opinion in Commonwealth v. White, 429 Mass. 258 (1999). In White, the Court ruled that in criminal cases, "a notice of appeal of any judgment or order appealed from must be filed within thirty days after the entry of the order," even though Appellate Rule 4 may not have been clear on the matter. Specific language has now been added to Rule 4(b) to eliminate any ambiguity.

Prior to the 2000 amendment, Appellate Rule 4(b) also provided that the notice of appeal was to be filed within thirty days, unless otherwise provided by statute. The rule now states that the notice of appeal is to be filed within thirty days unless otherwise provided by statute or court rule.

(1999)

[Rule 4(a)] The 1999 amendments to Appellate Rule 4(a) were part of a comprehensive set of amendments to the Appellate Rules (Rules 1, 3, 4, 8, and 10) that had been proposed by the Supreme Judicial Court Committee on Appeals of Child Welfare Cases. The purpose of the 1999 amendments is described in the 1999 Reporter's Notes to Appellate Rule 1(c).

Appellate Rule 4(a) has been amended to provide for a uniform 30-day period for filing a notice of appeal in all child welfare cases. See G.L. c. 119, § 27, as amended by St. 1999, c. 3, § 11.

(1985)

[Rule 4(a), second paragraph] This amendment makes Mass. R.A.P. 4(a) conform, in part, to a 1979 federal amendment. See Fed. R.A.P. 4(a)(4). Its primary purpose is to clarify an ambiguity as to the

effect of filing an appeal prior to a decision on specified timely motions under Mass. R. Civ. P. 50(b), 52(b) and 59.

Reporter's Notes (1985) [Rule 4(a), first paragraph] The added sentence conforms the Massachusetts Rule to the last sentence of Fed. R.A.P. 4(a)(1). The purpose is to protect appellants who mistakenly, but in otherwise timely fashion, file a notice of appeal in an appellate court rather than in the lower court.

The change from ten days to fourteen days for the filing of a cross-appeal conforms the time period to that found in Fed. R.A.P. 4(a)(3). Such conformity of time periods may aid practitioners.

(1979)

The first two paragraphs of former Rule 4 have been denominated subdivision (a) and are limited to civil cases.

Added to Rule 4 is the substance of subdivision (b), which enlarges the time for filing a claim of appeal in criminal cases from twenty days to thirty (see former G.L. c. 278, § 28 [St.1820, c. 79, § 4]; Superior Court Rule 65 [1974]; G.L. c. 278, § 33B [St.1955, c. 352, § 2]), and which provides that if a motion for a new trial (Mass. R. Crim. P. 30[b]) which is filed within thirty days after verdict or imposition of sentence is ultimately denied, a new thirty-day period for filing the claim of appeal from the conviction shall commence to run. While this latter provision may appear to foster delay, it actually formalizes prior practice.

This subdivision also recognizes the defendant's right to claim an appeal from a guilty verdict or finding as well as his right to appeal from the sentence. This was intended to avoid any ambiguity as to whether a claim of appeal prior to the final judgment was out of time and ineffective. See Commonwealth v. Dascalakis, 246 Mass. 12, 19 "Sentence is final judgment in a criminal case."

The third paragraph of former Rule 4 is now subdivision (c) and is applicable to both civil and criminal appeals. Under former G.L. c. 278, § 33B, the twenty-day limit was mandatory and could not be extended by consent of the parties or by the court; an untimely claim of appeal divested the appellate court of jurisdiction. Commonwealth v. Rodrigues, 333 Mass. 501 (1956); Commonwealth v. McKnight, 289 Mass. 530, 538, 540 (1935).

See also Commonwealth v. Dorius, 343 Mass. 533 (1962) where it was held that after the time for filing the claim of appeal had expired the trial court was without jurisdiction to extend the period by allowing a motion to make the case subject to then G.L. c. 278, § 33E as amended St.1979 c. 346, § 2 which would thereby trigger a new appeal period.

See Silvia v. Laurie, 549 F.2d 892 (1st Cir. 1978) where the Court of Appeals also held the time limit for filing the claim of appeal under the Federal Rules of Appellate Procedure was jurisdictional.

[T]he time limits of [Fed.R.App.P.] 4 are not merely procedural requirements that can be waived at the discretion of the court, but rather are limits on . . . [the appellate] court's power to review decisions of the ... [lower] courts. . . . While the application of this rule may lead to apparently harsh results in some cases, it serves important interests of finality. 594 F.2d at 893. Subdivision (c) permits the lower court to extend the time for filing a notice of appeal by an additional thirty days upon "a showing of excusable neglect." Such an extension, whether granted before or after the expiration of the thirty days prescribed by subdivision (b), may not enlarge the time beyond sixty days after the verdict or finding of guilt or imposition of sentence. See Silvia v. Laurie, supra. Compare Mass. R. App. P. 14(b) (Appellate court or single justice may extend time for noticing appeal up to one year after verdict or sentence).

(1973)

Certain motions toll the running of the appeal time. These motions, enumerated in Appellate Rule 4, pertain to the allowance or denial of a judgment, the opening of the record, the altering or amending of a judgment, and the seeking of a new trial. The new, full appeal period begins to run from the day the court finally decides a motion in any of the foregoing classes. The time for filing an appeal may be enlarged by order of an appellate court or an appellate justice, but such extension can never exceed one year from the date of the judgment or order appealed from, see Appellate Rule 14(b).

RULE 5: REPORT OF A CASE FOR DETERMINATION

A report of a case for determination by an appellate court shall for all purposes under these rules be taken as the equivalent of a notice of appeal. Whenever a case or any part of it is reported after decision or verdict, the aggrieved party (as designated by the lower court) shall be treated as the appellant. Whenever a case or any part of it is reported without decision or verdict, the plaintiff in a civil action or the defendant in a criminal case shall be treated as the appellant. The clerk of the lower court shall serve notice of the filing of the report by transmitting a copy thereof to each party.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 5 was revised to reflect notification methods include "transmitting" notice, which may include electronic or conventional mail. Minor changes were made to the final sentence of Rule 5 to remove terms rendered unnecessary by the new definition of "party" added to Rule 1(c) in 2019.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

This rule is amended to provide that if a case is reported by the trial court prior to a decision or verdict, the plaintiff in a civil action or the defendant in a criminal case is to be the appellant. If a whole case or any issue arising therein is reported after a decision or verdict, the aggrieved party, as determined by the trial court, shall be designated as the appellant. As to reports in criminal cases generally, see Mass. R. Crim. P. 34 (1979) and Reporter's Notes.

(1973)

No federal analogue to Appellate Rule 5 exists. Read in conjunction with Mass. R. Civ. P. 64 (Report of Case), it prescribes the adversarial framework at the appellate level for cases reported, either after an interlocutory ruling, upon an agreed statement of facts, or on a question of law reserved by a single justice of the Supreme Judicial Court (see Mass. R. Civ. P. 64). Whatever the form of the report, no party need file a separate notice of appeal (compare Appellate Rule 3); the report itself serves that function.

RULE 6: STAY OR INJUNCTION PENDING APPEAL

In civil cases, motions for a stay of the judgment or order of a lower court pending appeal, or for approval of a bond under Rule 6 (e), or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, are governed by this Rule.

In criminal cases, motions for a stay of execution of a sentence pending appeal, or to revoke, vacate, or modify such a stay, are governed by this Rule and by Massachusetts Rule of Criminal Procedure 31.

All Rule 6 motions filed in the Appeals Court shall comply with both this Rule and Massachusetts Appeals Court Rule 6.0.

(a) Relief Must Ordinarily Be Sought in the First Instance in the Lower Court

A motion for a stay of the judgment or order of a lower court pending appeal, or for approval of a bond under Rule 6 (e), or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for stay of execution of a criminal sentence pending appeal, must ordinarily be made in the first instance in the lower court.

(b) Motion for Relief in Appellate Court; Requirements for Same

(1)

A motion under Rule 6 (a) may also be made to a single justice of the court to which the appeal is being taken. Such a motion must show that a motion to the lower court is not practicable, or that the lower court has previously denied such a motion or did not afford the relief requested.

(2)

A motion to vacate a stay pending appeal may be made by any party, including the Commonwealth, in the first instance to a single justice of the appellate court to which the appeal is being taken.

(3)

Motions made in the appellate court shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other statements signed under the penalties of perjury or copies thereof. The movant shall also file all relevant parts of the lower court record, including, but not limited to, the lower court judge's decision and reasoning, all filings and information submitted to the lower court in connection with the motion, and (in criminal cases) a copy of the defendant's criminal history, if any, which shall be designated as impounded. 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.

(4)

Where an appeal is being taken to the Supreme Judicial Court, motions made under subsections (1) or (2) shall be filed with the clerk of the Supreme Judicial Court for Suffolk County.

(c) Reasonable Notice and Response Period

Reasonable notice of the motion shall be given to the nonmoving party.

(1)

If the motion is filed prior to the docketing of the appeal in an appellate court, the time for response shall be governed by Rule 15.

(2)

After an appeal has been docketed pursuant to Rule 10 (a) (2),

(a) if the motion is filed at least 30 days prior to the date the appellant's brief is due, the time for a response shall be governed by Rule 15; or
(b) if the motion is filed at any other time, the nonmoving party shall have 30 days to respond.

(3)

A single justice may shorten or extend the time for responding to any motion authorized by this rule, and may act on the motion without receiving or awaiting a response.

(d) Terms

Relief available in the appellate court under this Rule, or denial of such relief, may be conditioned on such reasonable terms as the appellate court or single justice may impose. For failure to observe such terms, the appellate court or single justice may make such further order as it or the single justice deems just and appropriate.

(e) Civil Cases; Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties

In civil cases, relief available in the appellate court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the lower court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety thereby shall submit to the jurisdiction of the lower court and irrevocably appoint the clerk of the lower court as an authorized agent upon whom any documents affecting liability on the bond or undertaking may be served. A surety's liability may be entered against the surety on motion in the lower court without the necessity of an independent action. The motion and such notice of the motion as the lower court prescribes may be served on the clerk of the lower court, who shall forthwith mail copies to the sureties if their addresses are known.

(f) Revocation of Stay in Criminal Case

If a defendant fails at any time to take any measure necessary for the hearing of an appeal or report, a stay of execution of a sentence may, on motion of the Commonwealth, be revoked.

(g) Expiration of Stay in Criminal Case

Upon the release of the decision by the appellate court of a judgment affirming the conviction, the stay of execution of the sentence automatically expires, unless extended by the appellate court.

(h) Notice of Expiration of Stay in Criminal Case

Upon release of a decision affirming the conviction, the clerk of the appellate court shall notify the clerk of the lower court and the parties that the conviction has been affirmed and that, therefore, the stay of execution of the sentence has automatically expired.

(i) Appealability of Single Justice Order; Finality

An order by the single justice allowing or denying a motion under this Rule may be appealed to the appellate court in which the appeal is being taken. The decision of the appellate court shall be final.

Rule History

Amended December 14, 1976, effective January 1, 1977; amended May 15, 1979, effective July 1, 1979; amended June 24, 2009, effective October 1, 2009; amended October 31, 2018, effective March 1, 2019; amended May 7, 2024, effective July 1, 2024.

Reporter's Notes

(2024)

In Commonwealth v. Nash, 486 Mass. 394, 400 n.10 (2020), the Supreme Judicial Court invited the committee to clarify Rule 6 (b) to "explicitly recognize the Commonwealth's right to file a motion, in the appellate court that is to hear and decide the underlying appeal, to challenge a trial judge's granting of a stay." While considering amendments in response to this invitation, the committee concluded that additional changes were necessary not only to Rule 6 (b), but also to Rule 6 (a). These further changes are primarily for reasons of style, consistency, or clarification.

The amended version of the rule adopts a new structure to avoid unnecessary duplication between former Rule 6 (a) (which pertained to civil cases) and former Rule 6 (b) (which pertained to criminal cases). The amended version has the following structure. The first two introductory paragraphs are merely informative and point the reader to other rules that should be consulted when filing a motion falling within Rule 6. Thereafter, new subsections (a)–(d) pertain to both civil and criminal cases. Subsection (e) pertains to civil cases; subsections (f)–(h) pertain to criminal cases. Subsection (i) pertains to all cases. With the exception of subsection (d), the reorganization is not intended to result in any substantive change, but only to enhance clarity and avoid duplication.

The revisions change the term "application" to "motion" throughout, without intending any substantive change. "Motion" merely is the modern-day term used to describe a request seeking the type of relief encompassed by Rule 6, whether such a request is filed in the lower court or the single justice session of the appellate court. While currently Mass. R. Crim. P. 31 (b), pertaining to the filing of requests for a stay of execution of sentence pending appeal, continues to use the term "application," there is no substantive distinction between that term and the term "motion" as it is used in Rule 6.

Rule 6 (a) was revised to combine the parallel provisions for criminal and civil cases to eliminate unnecessary duplication in the text of the rule.

Rule 6 (b) (1) is essentially the same as the prior version, but was streamlined to apply to both criminal and civil cases and to eliminate redundant language.

Rule 6 (b) (2) is new and, pursuant to Nash, 486 Mass. at 400 n.10, clarifies that a motion to vacate a stay of execution of sentence pending appeal may be made by any party, including the Commonwealth, in the first instance to the single justice of the appellate court to which the appeal is being taken. As with the appeal of a single justice's order allowing or denying a stay of execution of sentence, an appeal from a single justice's order on a motion to vacate a stay may be appealed to the appellate court to which the underlying appeal is being taken.

Rule 6 (b) (3) is revised to state with greater detail and clarity the portions of the record that should accompany a Rule 6 motion. Previously, the rule was vague as it only required "such parts of the record as are relevant." The amendments clarify that, at a minimum, this includes a complete copy of the judge's decision and reasoning and all materials submitted to the lower court in connection with the motion, such as the motion, any supporting memoranda, any opposition or responses, and any attachments or other supporting materials.

In criminal cases, the revisions also require the moving party to provide "a copy of the defendant's criminal history, if any, which shall be designated as impounded." See S.J.C. Rule 1:15, § 2 (b) (material impounded in the Trial Court shall remain impounded in the appellate court). See also G.

L. c. 6, §§ 167–168 (regulating the collection and dissemination of records of criminal proceedings); M.A.C. Rule 6.0 (b) (motions in the Appeals Court containing the defendant's criminal history are to "be filed in a separate record appendix volume, the cover of which clearly indicates that it includes impounded material."). This addition recognizes the practice of the appellate court single justices obtaining this information in connection with the determination of Rule 6 motions.

Finally, the revised rule provides that a transcript need not accompany the motion unless oral findings and rulings were placed on the record by the lower court. The revised rule recognizes that production of a transcript can take time to complete, and that time is often of the essence in Rule 6 motions. Accordingly, the revised rule seeks to avoid any unnecessary delay by allowing certain alternate means of conveying the lower court's oral findings and rulings to the single justice while the transcript is being prepared.

Rule 6 (b) (4) restates what was the final sentence of the prior version of Rule 6 (a) (1) and (b) (1).

Rule 6 (c), which applies to both civil and criminal cases, governs the notice of a motion and response period, and was revised consistent with Commonwealth v. Nash. It provides that a motion to vacate or revoke a stay is governed by the same deadlines as a motion for a stay. Subsection (d), which as prior Rule 6 (a) (3) applied only to civil cases, now applies to both civil and criminal cases. The change is designed to make clear that the appellate court, or a single justice, may impose terms and conditions when imposing or vacating a stay of execution of sentence in a criminal case. No change to the text of prior Rule 6 (a) (3) was made, except to label it as (d), and to move the text to a new section whose scope now includes criminal cases.

Rule 6 (e) restates what was the prior version of Rule 6 (a) (2).

Rules 6 (f)–(h) restate what were the prior versions of Rules 6 (b) (4)–(6).

Rule 6 (i) was amended to include that a single justice's order allowing or denying a motion to vacate a stay of execution of sentence pending appeal may be appealed to the appellate court in which the appeal is being taken.

Rule 6 (b) and the "gatekeeper" provisions of G. L. c. 278, § 33E. The "gatekeeper" provisions of G. L. c. 278, § 33E provide in part that "[i]f any motion is filed in the superior court after rescript [issues from the direct appeal of a conviction for first-degree murder or third conviction as a habitual offender], no appeal shall lie from the decision of that court upon such motion unless the appeal is allowed by a single justice of the supreme judicial court." In a case where codefendants filed motions for new trial and motions for stay long after the denial of their direct appeals of their convictions for first-degree murder, the Supreme Judicial Court held that "we do not consider the defendants' G. L. c. 211, § 3, petition to be an attempt to appeal per se from the [motion] judges'

adverse rulings on the motions for a stay, but the functional equivalent of a new motion for a stay pursuant to rule 6 (b) (1). The defendants were therefore not obligated to file a gatekeeper application before requesting a stay from the single justice." Pope v. Commonwealth, 487 Mass. 1014, 1014–15 (2021).

(2019)

Rule 6(b)(2) was revised to clarify the standard time period for the Commonwealth to file a response to a motion for a stay of execution of a sentence. A motion to stay execution of a sentence may be filed in the appellate court either prior to completion of the record assembly process and the docketing of the appeal, or after the underlying appeal has been assembled and docketed pursuant to Rules 9 and 10. The timing of the motion affects the timing of the Commonwealth's response. Rules 6(b)(2)(A) and 6(b)(2)(B)(i) provide that if the motion to stay sentence is filed prior to the docketing of the appeal in the appellate court, or after docketing of the appeal and at least 30 days prior to the due date for the appellant's brief, the Commonwealth's response time is governed by Rule 15. Otherwise, the Commonwealth has 30 days to respond pursuant to Rule 6(b)(2)(B)(ii). This clarification will eliminate any misapprehension that the Commonwealth has 30 days to respond in all circumstances. In either situation, the time for response may be shortened or extended by a single justice.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2009)

[The notes to the 2009 amendments were drafted by the Reporter for the Massachusetts Rules of Criminal Procedure]. This Rule was revised in 2009 to describe more fully the procedure for obtaining a stay of execution of a criminal sentence in an appellate court. It complements Rule 31 of the Rules of Criminal Procedure.

The 2009 amendment clarified the appellate process for stays of execution of a criminal sentence pending an appeal. As in civil cases, requests for a stay must first be presented to the trial court, unless such an application is not practicable. Either the defendant or the Commonwealth may seek relief from a single justice of the court that will hear the appeal concerning the trial judge's decision to deny, e.g., Commonwealth v. Aviles, 422 Mass. 1008 (1996), or grant, e.g.

Commonwealth v. Hodge, 380 Mass. 851 (1980), a stay. Only the parties may do so. See Hagen v. Commonwealth, 437 Mass. 374, 375 (2002) (crime victim lacks standing to request revocation of stay). In the ordinary course of events, for all but first-degree murder cases a single justice of the Appeals Court is the appropriate forum. The single justice does not review the decision of the trial judge, but considers the matter de novo. See Commonwealth v. Allen, 378 Mass. 489, 497 (1979).

Rule 6(b)(2) recognizes that it is important to give the Commonwealth adequate time to prepare a response to a motion for a stay, since that will often require substantial effort in addressing the merits of the underlying appeal.

After the single justice decides the issue, there is only one further step in the process: an appeal to the panel of the Appeals Court that will decide the merits, or the full bench of the Supreme Judicial Court if the case will be decided there. This changes prior practice, which allowed a party aggrieved by the decision of a single justice of the Appeals Court the option of seeking relief both by appealing the decision in that court and asking a single justice of the Supreme Judicial Court to entertain the matter. See e.g., Duong v. Commonwealth, 434 Mass. 1006 (2001). The appeal from the decision of the single justice may be accompanied by a motion for an expedited ruling. See e.g., Restucci v. Commonwealth, 442 Mass. 1045(2004).

As also provided in Mass. R. Crim. P. 31, a stay of execution of sentence automatically expires when the appellate court considering the appeal releases a rescript affirming the conviction, unless the appellate court decides to extend it. A rescript is "released" when it is announced to the public and the appellate court notifies the parties that the court has decided the case. Cf. Mass. R. App. P. 23 (requiring the clerk of the appellate court to mail the parties a copy of the rescript and the opinion, if any). In the ordinary course of events, the rescript "issues" twenty-eight days following the release date or upon the denial of any petition for rehearing or application for further appellate review, whichever is later. Id.

When a rescript is released affirming a conviction, the clerk of the appellate court, in addition to the obligation that Mass. R. App. P. 23 imposes, shall notify the parties and the trial court clerk that the stay of execution of sentence has automatically expired. If the defendant wishes to apply for a new stay, in order to seek a rehearing or further appellate review, such a request should go to the appellate court that decided the case (either the panel of the Appeals Court or the full bench of the Supreme Judicial Court).

The court that decided the appeal may exercise its discretion to extend a stay of execution pending a petition for rehearing, application for further appellate review, or petition for certiorari. Unless otherwise specified, an extended stay expires when the rescript issues. The appellate court may act sua sponte or pursuant to the defendant's motion, which may be filed before the appeal is decided or after the rescript is released.

(1979)

Subdivision (a) of Rule 6, requiring applications or motions for stays to be ordinarily filed in the lower court in the first instance, is expanded to cover both civil and criminal cases.

Subdivisions (b) and (c) of former Rule 6 are made (b)(1) and (b)(2) of the amended rule, and are applicable only to civil cases. A new subdivision (c), relative to motions for stays of execution of sentence in criminal cases, incorporates by reference Mass. R. Crim. P. 31 (1979).

The Appeals Court in Commonwealth v. Levin, Mass. App. Ct. Adv. Sh. (1979) 857 further app. rev. denied Mass. Adv. Sh. (1979) 1610 and the Supreme Judicial Court in Commonwealth v. Allen, Mass. Adv. Sh. (1979) 1819 established the criteria for determining whether a stay of sentence pending appellate review ought to be granted. These cases establish that the same judgment and discretion as used by the lower courts in bail applications can properly be considered on questions on motions for stay. These cases acknowledge that considerations such as whether the defendant was likely to be a danger to any other person or to the community and as to the likelihood of further criminal conduct during the pendency of the appeal were appropriate.

Under these decisions the lower court is also empowered to require that the appeal present "an issue which is worthy of presentation to an appellate court, one which offers some reasonable possibility of a successful decision in the appeal." Commonwealth v. Levin, Mass. App. Ct. Adv. Sh. (1979) 857, 860.

The Supreme Judicial Court in Allen further held that the application of this standard was open, de novo, to the full bench of the appellate court after a determination of the single justice of that court denying a stay. Subdivision (c) also establishes that a stay of execution, once granted, is always subject to being vacated if the defendant is not diligent in prosecuting his appeal. See ABA Standards Relating to Criminal Appeals 1.5(a) & commentary at 1.5(d) (Approved Draft, 1978).

The second paragraph of subdivision (c) was added to ensure that an appeal, where a stay of sentence had been allowed, is prosecuted with reasonable dispatch under all the circumstances. It is expected that this provision will be used to vacate a stay for serious delays caused by the appellant and not for mere technical lapses which do not disrupt the schedule of the appellate court.

(1973)

Appellate Rule 6, patterned on F.R.A.P. 8, allows the court (first the lower court, then the appellate court) to grant such relief as may be necessary to preserve the rights of the parties during the pendency of an appeal. Appellate Rule 6 does not substantially alter the powers of the court under existing practice. See G.L. c. 14, § 619. City of Boston v. Santosuosso, 308 Mass. 202, 10, 31 N.E.2d 57, 578 (1941); G.L. c. 31, § 116. Appellate Rule 6(c), which is new, codifies existing federal

practice. See also Mass.R.Civ.P. 6 (c). Prior Massachusetts practice will, however continue to control stays in criminal cases. G.L. c. 78, § 8B, c. 79, §§ 4, 49A.

RULE 7: DISABILITY OF A MEMBER OF THE LOWER COURT

If a judge whose decision has been appealed to the appellate court becomes unable to participate further, then any other judge of or assigned to the lower court may be substituted.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 7 was substantially revised to eliminate an enumerated list of the reasons a lower court judge may become unable to participate further in a case on appeal and to clarify that judicial substitutions may be made as needed. The revised language is consistent with Mass. R. Civ. P. 63 and Mass. R. Crim. P. 38.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

Disability of the trial judge in criminal cases was formerly dealt with in Supreme Judicial Court Rule 1:10 (1975: 366 Mass. 859-60) and Appeals Court Rule 1:10 (1975: 3 Mass. App. Ct. 803), which are superseded by the application of this rule to criminal proceedings. As to disability of the judge under the trial rules, see Mass. R. Civ. P. 63 (1974) and Mass. R. Crim. P. 38 (1979).

(1973)

This rule, which does not appear in the Federal Rules of Appellate Procedure, reads into appellate procedure the provisions of Mass. R.Civ.P. 63, and ensures that whenever the Appellate Rules require action by the lower court judge, his disability will not of itself impede the appellate process.

RULE 8: THE RECORD ON APPEAL

(a) Definition

The record on appeal shall consist of the documents and exhibits on file, the transcript of the proceedings, if any, and the docket entries.

(b) Producing the Transcript of Proceedings

(1) Cases Other than Child Welfare Cases

(A) Transcript Orders and Certifications

For those proceedings relevant to the appeal that were recorded by a court reporter, the appellant shall order a transcript of those proceedings within 14 days of filing the notice of appeal in accordance with procedures set by the Chief Justice of the Trial Court, unless the appellant certifies to the clerk (i) that no lower court proceedings are relevant to the appeal or (ii) that the transcript is on file with the court. For those proceedings relevant to the appeal that were electronically recorded, the appellant shall request the transmission of the audio recording of those proceedings and order the transcription of those proceedings within 14 days of filing the notice of appeal in accordance with procedures set by the Chief Justice of the Trial Court, unless the appellant certifies to the clerk (i) that no lower court proceedings are relevant to the appeal or (ii) that the transcript of all proceedings relevant to the appeal is on file with the court. The appellant shall at the same time file a copy of the transcript orders or certifications with the clerk and serve a copy on all other parties. Within 14 days of service of the appellant's transcript orders or certifications, any other party may order a transcript of additional proceedings in accordance with procedures set by the Chief Justice of the Trial Court. Such party shall at the same time file a copy of the transcript order with the clerk and serve a copy on all other parties.

(B) Stipulation that Transcript is Unnecessary

To the extent consistent with the appellant's duty to provide an adequate record to the appellate court, the parties may stipulate that the transcription of some or all of the proceedings relevant to the appeal is unnecessary to the adjudication of the appeal, in which case the appellant need order only the transcript of the proceedings, if any, that the parties agree are necessary to the adjudication of the appeal. The parties shall file the stipulation with the clerk within 14 days of the filing of the notice of appeal.

(C) Costs of Transcription

In any criminal case and in a civil case in which the appellant is entitled to have counsel made available pursuant to Supreme Judicial Court Rule 3:10, the Commonwealth shall pay for the cost of providing the transcript of all proceedings relevant to the appeal, including those designated by the appellee, to the lower court clerk. In all other cases, unless ordered otherwise by the lower court, the appellant shall pay for such costs. If the parties cannot agree on which proceedings are relevant to the appeal, the lower court shall settle the matter upon motion. Payment, if required, for copies of the transcript for the parties shall be governed by procedures set by the Chief Justice of the Trial Court.

(2) Child Welfare Cases

Upon the filing of a notice of appeal, unless the parties file a stipulation designating the parts of the proceedings which need not be transcribed or a statement of intent to proceed under Rule 8(d), the clerk of the lower court shall order, within 14 days and in accordance with procedures set by the Chief Justice of the Trial Court, a transcript of the proceedings relevant to the appeal and shall serve a copy of the transcript order on the parties.

(3) Delivery of the Transcript

Upon completion, the transcriber shall deliver the transcript to the clerk of the lower court in accordance with procedures set by the Chief Justice of the Trial Court. The delivery of transcripts to the parties shall be governed by procedures set by the Chief Justice of the Trial Court. Upon receipt of all of the transcripts ordered by the parties, the clerk shall notify all parties within 14 days that the transcripts have been received.

(c) Statement of the Proceedings When No Report or Transcript is Available

If no report of the evidence or proceedings at a hearing or trial was made and a transcript is unavailable, the appellant shall file a motion to reconstruct the record within 14 days of the filing of the notice of appeal. The parties shall confer and reconstruct the record. Within such time as the lower court shall allow, the appellant shall file a proposed statement of the proceedings. Within 14 days of service of the proposed statement, any other party may file objections or proposed amendments or additions. The lower court shall promptly settle any disputes and approve a statement of the proceedings for inclusion in the record on appeal.

(d) Agreed Statement as the Record on Appeal

If the parties intend to submit an agreed statement as the record on appeal in lieu of the procedures set forth in Rule 8(a)-(c), the parties shall notify the clerk in writing within 14 days of the filing of the notice of appeal. Within 28 days of the filing of the notice to the clerk, the parties shall submit to the lower court an agreed statement of the record on appeal containing such information as is necessary for consideration of the appeal. If the statement conforms to the truth, the lower court shall approve the statement, along with any additions the lower court considers useful to the appellate court.

(e) Correction or Modification of the Record

(1) Omissions

If anything material is omitted from the record, the parties may supply it by stipulation and submit the stipulation for the approval of the lower court. If the parties are unable to agree, the lower court on motion shall settle the dispute and add to the record on appeal. On motion of the parties or on its own motion, the appellate court or a single justice may direct that any omission be rectified.

(2) Corrections

If any part of the record on appeal fails to accord with what occurred in the lower court, the parties may correct the record by stipulation and submit the stipulation for the approval of the lower court. If the parties are unable to agree, the lower court on motion shall settle any disputes and conform the record to the truth. On motion of the parties or on its own motion, the appellate court or a single justice may direct that any part of the record be corrected.

(3) Inaudible Recording

If portions of the proceedings cannot be transcribed because they are unintelligible, the parties shall promptly use reasonable efforts to stipulate to their content, and shall submit any such stipulation for the approval of the lower court. If the parties are unable to agree, the lower court shall settle the dispute on motion.

Rule History

Amended June 27, 1974, effective July 1, 1974; amended effective February 24, 1975; amended May 15, 1979, effective July 1, 1979; amended June 28, 1979, effective July 1, 1979; amended February 17, 1983, effective April 1, 1983; amended May 29, 1986, effective July 1, 1986; amended June 23, 1986, effective July 1, 1986; amended October 1, 1998, effective November 2, 1998;

amended July 28, 1999, effective September 1, 1999; amended June 26, 2002, effective September 3, 2002; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The 2019 revisions to Rules 8 and 9(a) were recommended by the Trial Court Committee on Transcript Production, a committee convened by the Chief Justice of the Trial Court in 2016 to address widespread dissatisfaction with the complexity and lack of flexibility afforded by the prior rules. The revisions facilitate assembly of the record on appeal by streamlining the requirements for production of the transcript of the lower court proceedings.

Rule 8(a) was revised to simplify the description of the record on appeal. The requirement that the docket entries be certified was eliminated, consistent with revisions to Rule 9(e)(2)(D). The reference to inclusion in the record of "the report of the trial judge to the appellate division" was deleted because such a report would be part of the documents on file with the lower court.

Rule 8(b)(1) governs all appeals except appeals in child welfare cases. Under Rule 8(b)(1)(A), within 14 days of the filing of a notice of appeal, the appellant must either order transcripts of "all court proceedings relevant to the appeal," certify that no court proceedings are relevant to the appeal, or certify that the relevant transcripts have already been filed with the lower court. The orders or certifications are filed with the lower court clerk and the appellant is required to give notice to the other parties. If proceedings were electronically recorded, the appellant must order the recording and the transcript at the same time. Prior requirements regarding designation were deleted from this rule. If the appellee believes that other proceedings should be transcribed, the appellee may order the transcript of those proceedings within 14 days of the appellant's order. The procedural mechanics of the parties' orders are to be determined by the Chief Justice of the Trial Court in an Administrative Order, to allow flexibility in the transcript request and production processes as technology advances.

Rule 8(b)(1)(B) retains the right of the parties to stipulate that transcription of some or all of the court proceedings is unnecessary to the appeal. The parties must file the stipulation with the lower court clerk with 14 days of the filing of a notice of appeal.

The requirement in prior Rule 8(1)(b)(2) that the clerk of the lower court in a criminal case order the transcript without the prompting of the appellant was deleted. The appellant's trial counsel is better able than the clerk to determine which dates and hearings are potentially relevant to an appeal.

Rule 8(b)(1)(C) governs the cost of producing the transcript. The Commonwealth is responsible for paying for the transcript for the lower court in all criminal cases and in civil cases in which the appellant was entitled to appointed counsel. In other cases, the appellant is required to pay for the transcript for the lower court for all proceedings relevant to the appeal, regardless of whether the appellant or the appellee ordered them. The lower court may settle any dispute over whether transcripts ordered by the appellee are relevant to the appeal and has the authority to shift costs in the interests of justice. Payment of costs for the copies of the transcripts to be provided to the parties is determined by the Chief Justice of the Trial Court in an Administrative Order because it concerns contracts between the Trial Court and transcribers and court reporters, and will be influenced by the expansion of electronic processes.

Rule 8(b)(2) governs child welfare cases, which continues prior Rule 8(b)(5)'s recognition of the urgency of child welfare appeals. Rule 8(b)(2) requires the lower court clerk to order the transcript of the court proceedings relevant to the appeal, unless the parties stipulate otherwise within 14 days of the filing of a notice of appeal.

Rule 8(b)(3) clarifies that, in all cases, the transcriber must deliver the transcript directly to the lower court clerk, rather than providing it to the ordering party for delivery to the clerk.

This clarification is intended to avoid unnecessary delays. The mechanics of such delivery is governed by an Administrative Order published by the Chief Justice of the Trial Court, which is intended to allow the Trial Court to take immediate advantage of advances in technology regarding electronic delivery. The lower court clerk has the duty of informing all parties when all transcripts have been received. Of course, a clerk may also inform parties when transcripts of some, but not all, proceedings are received.

Rule 8(c) was revised to modify the procedure for reconstructing the record when a transcript is unavailable. Under the modified procedure, the appellant must file a motion to reconstruct the record within 14 days of the filing of the notice of appeal. Unlike prior Rule 8(c), the duty is on the parties to confer prior to the filing of a proposed reconstruction in the lower court. This process is more likely to achieve the objective of reconstructing a record adequate for the appellate court and better reflects the Supreme Judicial Court's admonition that "'[a]ll those with . . . relevant evidence, but particularly the attorneys involved at the trial, are under an affirmative duty to use their best efforts to ensure that a sufficient reconstruction is made if at all possible.'" Drayton v. Commonwealth, 450 Mass. 1028, 1030 (2008), quoting Commonwealth v. Harris, 376 Mass. 74, 79 (1978). Once the parties have conferred, the appellant shall file a proposed reconstruction within such time as the lower court shall allow, and any other party may file objections, amendments, or additions, and the lower court shall settle the matter. The deadline for filing such objections, amendments, or additions is changed from 10 days to 14 days after the filing of a proposed reconstruction.

Rule 8(d) continues prior Rule 8(d)'s provisions authorizing the parties to file an agreed statement of the record on appeal. Unlike the prior rule, however, the parties must notify the lower court clerk of their intention to do so within 14 days of the filing of a notice of appeal. The agreed statement is to be filed within 28 days of the parties' notification to the clerk.

Rule 8(e) was revised to clarify the procedures for correction or modification of the record. The subdivision was separated into three paragraphs, each addressing a different method for modification of the record: omissions, corrections, or an inaudible recording. In each case, the parties may stipulate to a correction and submit the stipulation to the lower court for approval. If the parties cannot agree, they may submit the dispute to the lower court for resolution. The provision of prior Rule 8(e) that allowed parties to stipulate to an addition to the transcripts, but not a correction without lower court approval, was deleted. In both instances, the amended rule requires approval of the lower court. The appellate court may benefit from any guidance the lower court judge may be able to provide. The appellate court retains the ability to order a correction or addition to the transcripts, with or without lower court input.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2002)

The 2002 amendment to Appellate Rule 8(b)(2) requires that upon the filing of a notice of appeal in a criminal case, the clerk of the lower court shall order a transcript from the court reporter within 10 days. Prior to this amendment, there was no time period prescribed for ordering the transcript.

This amendment will make the practice in criminal cases consistent with that already in existence in civil cases in Massachusetts. Appellate Rule 8(b)(1) requires that in a civil case, the appellant shall order the transcript within ten days after filing of the notice of appeal. It should be noted that Rule 10(b)(1) of the Federal Rules of Appellate Procedure likewise requires that the transcript in civil and criminal cases in federal court be ordered within ten days of the filing of the notice of appeal.

(1999)

[Rule 8(b)] The 1999 amendments to Appellate Rule 8(b) were part of a comprehensive set of amendments to the Appellate Rules (Rules 1, 3, 4, 8, and 10) that had been proposed by the

Supreme Judicial Court Committee on Appeals of Child Welfare Cases. The purpose of the 1999 amendments is described in the 1999 Reporter's Notes to Appellate Rule 1(c).

Appellate Rule 8(b)(1) (concerning ordering the transcript) and Rule 8(b)(3) (concerning electronically-recorded proceedings) have been made inapplicable to child welfare cases. Instead, the ordering of the transcript of the proceeding is now controlled by Rule 8(b)(5). Rule 8(b)(5) shifts the duty of ordering the cassettes and transcripts from the appellant to the clerk of the lower court. Modeled in part after the procedures applicable in criminal cases, new Rule 8(b)(5) is intended to expedite preparation of the transcript in child welfare cases.

(1998)

[Rule 8(b)(3)] The 1998 amendment to Appellate Rule 8(b)(3) deals with appeals in proceedings that were electronically-recorded on court-controlled recording equipment and not recorded by an official court reporter.

The existing rule allows the appellant to designate either the entire cassette or only specified portions of the cassette to be transcribed for purposes of preparing the appellate record. The existing rule further provides that where less than the entire cassette is to be designated, the appellant must inform the appellee of those portions of the cassette that are to be transcribed. This allows the appellee to counter-designate additional portions of the cassette for transcription. However, the current rule does not require the appellant to inform the appellee of the issues that the appellee intends to present on the appeal, thus making it difficult for the appellee to make such counter-designation intelligently.

The 1998 amendment resolves this dilemma by requiring the appellant to file and serve on the appellee a statement of the issues together with the appellant's designation of transcript.

(1983)

Rule 8(b)(3) has been added to deal with tape-recorded transcripts. It is quite detailed because judges, clerks, and lawyers have complained about a lack of specificity with respect to the utilization of cassettes on appeal.

Rule 8(b)(3)(i) indicates when Rule 8(b)(3) applies. The Rule does not apply to court reporters, including voice writers, or to cases where a complete transcript has already been produced for use by the trial court, and is available to the parties. Rule 8(b)(3)(ii) gives the duties of appellants and clerks, and provides for appointment of a transcriber. A major purpose is to facilitate a speedy appeal. Consequently, an appellant must order a cassette at the time of appeal and state the date of receipt to insure that the designation is timely. Another major purpose is to reduce the number of steps required of the clerk. This rule permits the parties, if they can agree, to choose the transcriber. The appellant must inform the clerk at the time of transcript designation whether the

parties have so agreed. The parties must order their copies directly from the transcriber and make their own payment arrangements; the transcriber delivers transcripts directly to them. Rule 8(b)(3)(ii), unlike 8(b)(1), does not specify when an appellant must transcribe all evidence relevant to a finding or conclusion. This is not meant to change the law, but rather leave it to the parties to determine what must be transcribed in order to protect their appeal. The Standing Advisory Committee wants to discourage unnecessary transcription.

Rule 8(b)(3)(iii) gives the duties of the appellee with respect to ordering a cassette or arranging to borrow the appellant's, counter-designation, and ordering copies. Rule 8(b)(3)(iv) describes the transcriber's duties, and the certificate which the transcriber must file. Rule 8(b)(3)(v) covers the situation where a portion of the cassette is unintelligible; it requires the parties first to attempt to stipulate the contents of such portion, and provides for the trial judge, if possible, to settle differences. Rule 8(b)(3)(vi) requires that when the Commonwealth must pay for an original transcript or copy, the designating parties must certify that they have designated only necessary portions. Again, the purpose is to reduce costs.

Rule 8(b)(3) does not have its own provision concerning enlargements of time, but is subject to the general computation and extension of time provisions contained in Appellate Rule 14.

Here is a chronology of the major steps and time periods under this rule:

1. Simultaneously with filing the notice of appeal, the appellant, if desirous of a transcript, orders the cassette. Rule 8(b)(3)(ii).
2. The clerk promptly provides the cassette (Rule 8(b)(3)(ii)), unless an entire transcript is already available; in such event, the clerk notifies the parties, and the normal designation rules in Rules 8(b)(1) or 8(b)(2) apply. Rule 8(b)(3)(i). In such event, the appellant's time for ordering a transcript is within ten days after the clerk's notification. Rule 8(b)(3)(i). The clerk also notifies the parties if there has been a previous transcription of a portion of the cassette, so that the parties may utilize the prior partial transcription if they wish. Rule 8(b)(3)(ii).
3. Within fifteen days after receipt of the cassette from the clerk, the appellant designates which portions are to be included in the transcript. Rule 8(b)(3)(ii). If the appellant wants the entire cassette transcribed, then appellant also delivers the cassette to the transcriber and places the order within said fifteen day period. Rule 8(b)(3)(ii).
4. When the appellant has not ordered the transcription of the entire transcript, the appellee has fifteen days from service of the appellant's designation to file and serve a counter-designation. Rule 8(b)(3)(iii).
5. When the appellant has not already designated the entire cassette for transcription, the appellant delivers the cassette to the transcriber and places the order promptly after twenty days have expired from service upon the appellee of the appellant's designation.

Rule 8(b)(3)(ii). This, in effect, gives the appellant at least five days to deliver the cassette to the transcriber and place the order, for the appellee had to file and serve the counter-designation within fifteen days.

In summary, from the time the appellant receives the cassette from the clerk, the entire designation process takes fifteen days if appellant orders the entire cassette transcribed, and "promptly" after thirty-five days if appellant has designated less than the entire cassette.

(1979)

The second sentence of subdivision (a) of former Rule 8 is amended to clarify that it applies to appeals in civil cases from the Appellate Division of the District Court Department (G.L. c. 231, § 108, as amended, St.1978, c. 478, § 264) and not to the Appellate Division of the Superior Court Department for review of sentences in criminal cases (G.L. c. 278, §§ 28A-28D).

Subdivision (b) of the former rule has been divided into subdivisions (b)(1), applicable to civil cases, and (b)(2), applicable to criminal cases. Subdivision (b)(1) is identical to former 8(b). Subdivision (b)(2) is wholly new.

Consonant with practice under former G.L. c. 278, §§ 33A-33H, a defendant is entitled to a complete transcript on appeal. Charpentier v. Commonwealth, Mass. Adv. Sh. (1978) 2163, 2172. Pursuant to (b)(2), upon the filing of a notice of appeal in a criminal case, the clerk of the lower court automatically orders from the court reporter a transcript of the proceedings out of which the appeal arises. Since counsel is no longer obligated to take this mechanical step, one point of delay under prior practice is thus eliminated. The parties may—and are encouraged by the rule to—file a stipulation as to those parts of the proceedings which are unnecessary to the appeal and which therefore need not be transcribed. The provision for stipulations as to parts of the proceedings which need not be transcribed is not applicable to capital cases under G.L. c. 278, § 33E, as amended, because in such cases, the "entire case" is before the Supreme Judicial Court, "including a transcript of the entire proceedings." E.g., Charpentier, supra at 2173 n.9. A "capital case" is a case in which the defendant was convicted of murder in the first degree. G.L. c. 278, § 33E, as amended. See Commonwealth v. O'Brien, Mass. Adv. Sh. (1976) 2926; Mass. R. Crim. P. 2(b)(3).

When the transcript is completed, the court reporter is to deliver it to the clerk of the lower court who prepares copies thereof for the appellate court, the appellant or appellants, and the appellee or appellees. The parties' copies are delivered to them, while the original and one copy are retained by the clerk for transmission to the appellate court as part of the record (Rule 9[d]).

In the district court jury sessions, the General Laws (G.L. c. 218, § 27A(h)) provide a procedure for appointment of a court reporter to transcribe the proceedings and in the alternative for an

electronic recording of the proceedings. These rules as well as G.L. c. 218, § 27A(g) provide that appeals from the district court jury sessions are to proceed in the same manner as appeals from the superior court.

Because of the unavailability of a court reporter in some cases in the district court jury sessions or where the defendant has not taken advantage of section 27A(h) it may be necessary for the clerk, who has the responsibility under this rule for the completion of the record, including the transcript, to cause a transcript to be made from an electronic recording.

After this necessary preliminary step has been taken by the district court clerk copies of the transcript are to be made and distributed as provided by this rule and rule 9(d).

The cost of preparation of the original transcript and of the copies required by this rule is borne by the Commonwealth except where the defendant is not indigent. In that case the defendant is to pay the clerk for the cost of producing his copy. The provision requiring production of the whole transcript is intended to provide for more expeditious and just disposition of questions on appeal. In the first place, the Commonwealth could not in all cases determine whether a partial transcript was adequate to serve its needs until such time as the defendant's brief was filed. Secondly, without a full transcript, appellate courts cannot resolve issues of plain error, a miscarriage of justice, or harmless error.

Subdivision (c) has been amended to enlarge the time within which a statement of the evidence or proceedings may be filed from ten to thirty days. Procedure like that provided under this subdivision has been followed by the Supreme Judicial Court in a criminal case when a transcript was unavailable. Commonwealth v. Harris, Mass. Adv. Sh. (1978) 2155.

It should be noted that the appellant may prepare and submit a statement of the evidence or proceeding from the best available means. However, as stated in Ingersoll Grove Nursing Home, Inc. v. Springfield Gas Light Co., Mass. Adv. Sh. (1979) 203, 204 a substitution is available only "if no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable." In a case in which the transcript is "made and available" the plaintiff is not entitled to substitute a statement of the evidence under subdivision (c).

Subdivision (d) however allows the parties to "prepare and sign a statement of the case" in lieu of the record. The term "statement of the evidence or proceeding" of subdivision (c) is not to be used interchangeably with "statement of the case" in subdivision (d) since the rules outline different procedures with respect to these terms.

The agreed statement permitted by subdivision (d) must now be filed within thirty days after the notice of appeal is filed; prior to this amendment no time limit was specified. The parties electing to proceed under the subdivision should notify the clerk that no transcript is to be ordered and, in

addition, that the agreed statement shall be substituted for the record as defined in subdivision (a). Filing of the agreed statement as the appendix required by Rule 18 has been made mandatory.

Subdivision (e), relative to correction or modification of the record, as applied to criminal cases, is similar in operation to prior provisions for settling a bill of exceptions (G.L. c. 278, § 31 [St.1974, c. 540, § 1]) or for correcting errors in a transcript (G.L. c. 278, § 33A [St.1974, c. 540, § 2]), although much broader in the scope of relief available.

(1975)

As originally promulgated, Appellate Rule 8 required the inclusion, in the record on appeal, of a certified copy of the order appealed from and the opinion. Because the record includes all "original papers" anyway, this requirement was superfluous. Accordingly, it has been eliminated.

(1973)

Based on F.R.A.P. 10, Appellate Rule 8 describes the record on appeal, which should be carefully distinguished from the record appendix. The record consists of the original papers and exhibits, plus a transcript of the proceedings and a certified copy of the docket entries, as well as any certified copy of the lower court's final order. The record appendix (see Appellate Rule 18) is that distillation of the decision-essential portions of the record which is filed in connection with the appellate brief.

The appellant is responsible for attending to the preparation of a transcript; this transcript must be sufficiently extensive to cover all points raised by the appeal. The phrase "description of the parts of the transcript," refers to such a description as "the plaintiff's entire testimony," rather than a designation by page and line, unless a more precise description is necessary.

If no transcript was made, the appellant may prepare a statement of the evidence in the proceedings in the most expeditious manner possible; after inspection by the appellee, this statement will be submitted to the lower court for approval. The statement of issues need be only extensive enough to enable the appellee to determine the need for ordering a transcript of other parts of the testimony.

The parties may, alternatively, prepare and file an agreed statement of facts. This is similar to existing practice, see G.L. c. 231, § 111; cf. Paulino v. Concord, 259 Mass. 142, 144, 155 N.E. 870, 871 (1927).

RULE 9: ASSEMBLY OF THE RECORD; REPRODUCTION OF EXHIBITS; NOTICE OF ASSEMBLY; AND TRANSMISSION OF DOCUMENTS FROM THE LOWER COURT

(a) Assembly

(1)

Upon the filing of a notice of appeal, the clerk of the lower court shall promptly review the file and ensure the accuracy of the docket entries and that all documents are properly numbered in order of filing or identified with reasonable specificity. The clerk shall prepare a list of all exhibits filed in the lower court and ensure that all exhibits are properly numbered and labeled. The clerk shall maintain the file until the final disposition of the appeal, unless otherwise ordered by a judge.

(2)

The lower court or the appellate court or a single justice thereof may order the record to be assembled, and the appellate court or a single justice thereof may order the appeal to be docketed, at any time.

(b) Exhibits

The lower court shall make such orders as it deems necessary for the preservation of exhibits, and shall not transmit any exhibit to the appellate court unless pursuant to an order of the appellate court or a justice thereof. The parties may reproduce exhibits for inclusion in the record appendix insofar as necessary to their appeal, pursuant to Rule 18.

(c) Impounded materials

When an appeal has been taken in a case in which material has been impounded, the clerk of the lower court shall provide written notification to the appellate court clerk that material was impounded by the lower court when notice of the assembled record is transmitted. Such notification shall specify the materials or portions thereof which were impounded below and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. Unless otherwise ordered by the appellate court, or otherwise provided in the

lower court order of impoundment, material impounded in the lower court shall remain impounded in the appellate courts.

(d) Appellant's Obligation

(1) In General

In a civil or criminal case, upon request by the clerk of the lower court, a party shall forthwith perform any act reasonably necessary to enable the clerk to assemble the record.

(2) Civil Cases

Notwithstanding any other obligation which these rules may impose, but excepting electronically recorded proceedings governed by Rule 8(b)(1), each appellant in a civil case shall, within 14 days after filing a notice of appeal, deliver to the clerk of the lower court either

(A) a transcript or those portions of the transcript of the lower court proceedings which the appellant deems necessary for determination of the appeal,
(B) a signed statement certifying that the appellant has ordered such portions, or
(C) a signed statement certifying that the appellant has not ordered and does not intend to order the transcript or any portion thereof.

(3) Denial of Motion for Post-Conviction Relief in a Criminal Case

Excepting an appellant in a criminal case in which the defendant was convicted of murder in the first degree, and notwithstanding any other obligation these rules may impose, after the direct appeal, each appellant in a criminal case in which the appeal concerns the denial of a motion for post-conviction relief shall, within 14 days after filing a notice of appeal, deliver to the clerk of the lower court an electronically formatted transcript of the lower court proceedings related to the appellant's underlying conviction or a statement that such a transcript may not be obtained with due diligence, is not relevant, or has been ordered and not yet produced. In lieu of a copy of the transcript, the appellant may file with the clerk of the lower court a certification that a copy of the transcript is available in the appellate court. The certification shall include the appellate court docket number of the case in which the transcript is available. The clerk of the lower court shall transmit the transcript of the lower court proceedings or the certification to the appellate court when notice of the assembled record is transmitted.

(e) Duty of Clerk; Transmission

(1)

Unless otherwise ordered by the lower court or the appellate court or a single justice thereof pursuant to Rule 9(a)(2), the clerk of the lower court shall complete the assembly of the record and transmit notice of the assembled record to the parties and the clerk of the appellate court either:

(A) within 21 days from the later of
  (i) the clerk's receipt of the transcript of proceedings, if any, in the lower court; or
  (ii) the clerk's receipt of notice from the appellant that no transcript will be ordered; or
  (iii) the expiration of the time for filing any other notice of appeal after the filing of a first notice of appeal, pursuant to Rule 4(a)(1)(C) or 4(d); or

(B) if the parties notify the clerk of their intent to file an agreed statement as to the record on appeal pursuant to Rule 8(d), within 21 days of the lower court's approval of the statement.

(2)

The notice of assembly transmitted to the appellate court shall be accompanied by the following:

(A) a completed appellate court entry statement;
(B) a copy of the notice of assembly issued to the parties;
(C) a copy of the notice(s) of appeal;
(D) a copy of the docket entries;
(E) the written notification regarding impounded materials as required by Rule 9(c);
(F) a list of all the exhibits; and,
(G) in criminal cases, any electronically formatted transcript, if a transcript is necessary for the appeal.

(3)

In case of an order to transmit, transmission shall be effected when the clerk of the lower court mails or otherwise forwards a copy of the notice of assembly and other information as required in this rule to the clerk of the appellate court.

(4)

The clerk of the lower court shall indicate, by endorsement on the face of the notice of assembly, the date upon which it is transmitted to the appellate court.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended effective May 1, 1994; amended June 26, 2002, effective September 3, 2002; amended October 31, 2018, effective March 1, 2019; amended September 3, 2025, effective October 1, 2025.

Reporter's Notes

(2025)

Rule 9(e)(1)(A)(iii) has been amended simultaneously with amendments to Rules 4(a)(1)(C), 4(a)(2)(B), and 4(d). Rule 4(a)(2)(B) now recognizes an "effective" date for certain notices of appeal that differs from the date on which the notice is filed. Rules 4(a)(1)(C) and 4(d) concern the time for filing subsequent notices of appeal by additional appellants or by cross-appellants after a first notice of appeal. Rule 9(e)(1)(A)(iii) has been amended to be consistent with the changes to Rule 4, and to require trial court clerks, when calculating the time for assembling records in cases where the first notice of appeal has an effective date under Rule 4 other than its filing date, to consider the effective date of such a notice.

(2019)

Rule 9. The title of Rule 9 was revised from "Assembly and Transmission of the Record: Exhibits" to "Assembly of the Record; Reproduction of Exhibits; Notice of Assembly; and Transmission of Documents from the Lower Court." The revised title more accurately describes the processes encompassed in the rule.

Rule 9(a) was divided into two paragraphs and the contents substantially revised. Rule 9(a)(1) is concerned with the lower court clerk's duty of reviewing the file and confirming the accuracy of the docket entries. Archaic language regarding spindling, binding, and tying papers in preparation for the appeal was deleted.

Rule 9(a)(2). The content of the second sentence of prior Rule 9(c)(1) was relocated to Rule 9(a)(2) because Rule 9(a) relates to the authority of the appellate court or a single justice to order a record assembled or appeal docketed. The remainder of prior Rule 9(c)(1) was designated Rule 9(d)(1) in the amended rules, and relates to the appellant's obligations.

Rule 9(b). The significant revisions to Rule 9(b) simplify the requirements regarding trial court exhibits and clarify the distinction between the record and the appendix. The amendments clarify that exhibits are not transmitted to the appellate court with the notice of assembly from the lower court, but remain in the lower court, and that parties can, and must, reproduce exhibits in their appendices when pertinent to the issues raised on appeal. See Rule 18(a)(1)(A), (D), and (F).

Rule 9(c) is a new subdivision requiring the clerk of the lower court to notify the clerk of the appellate court that information in the record was impounded by the lower court. The language of Rule 9(c) follows the requirements in S.J.C. Rule 1:15, §§ 2(a) and (b). This subdivision was added to ensure that the Rules are consistent with S.J.C. Rule 1:15 and current appellate court practices, and that impounded information is not inadvertently made available. It also clarifies for the lower court clerk that an affirmative notice to the appellate court clerk as to impounded information is required at the time of transmission of the notice of assembly of the record to the appellate court. See S.J.C. Rule 1:15, § 2(a).

Rule 9(d)(3) is a new paragraph. Except in an appeal from a conviction of murder in the first degree, the new paragraph requires the appellant in a criminal case concerning the denial of a motion for post-conviction relief to deliver to the clerk of the lower court a copy, in electronic form, of the transcript of the lower court proceedings related to the appellant's underlying conviction. Alternatively, in an appropriate case, the appellant may file a statement that the transcript may not be obtained by due diligence, is not relevant, has been ordered and not yet produced, or may file a certification that the transcript is already available in the appellate court, such as from the defendant's prior direct appeal. When transmitting the notice of assembly to the appellate court, the clerk of the lower court is required to transmit the transcript or certification. This paragraph was added to facilitate consideration of the appeal by the appellate court because the lower court's assembly of the record on appeal from a motion for post-conviction relief does not include the transcript of the underlying trial, which the appellate court needs to determine the subsequent appeal.

Rule 9(e), prior Rule 9(d), was divided into two paragraphs. Rule 9(e)(1) establishes a timeframe for the lower court clerk to assemble the record, and Rule 9(e)(2) denominates the items that the clerk is to include with the notice of assembly transmitted to the appellate court clerk. Rule 9(e)(1) includes a new provision requiring the clerk of the lower court to complete assembly of the record within 21 days of the last of the clerk's (1) receipt of the transcript, (2) receipt of notice from the appellant that no transcript will be ordered, (3) the expiration of the time for filing any other notice of appeal after the filing of the first notice of appeal, or (4) approval of an agreed statement of the record. In the common situation where multiple days of transcript have been ordered, the clerk will not assemble the record until all transcript volumes have been received. This amendment is intended to prevent delay in completion of the assembly of the record.

Rule 9(e)(2) identifies the documents that must be transmitted by the lower court clerk to the appellate court with the notice of assembly. The documents include a completed appellate court entry statement, a copy of the notice of assembly sent to the parties, a copy of the notice(s) of appeal, any notice of impounded information, and an exhibit list. The requirement that two "certified" copies of the docket entries be transmitted was reduced to one copy, which need not be certified. Removing the requirement that the lower court docket be certified recognizes that it

can be presumed that the docket is authentic because it is transmitted directly from the lower court, facilitates transmission of the notice of assembly and accompanying documents to the appellate court, and is consistent with the requirements in Rule 18 (the copy of the docket included in the appendix need not be certified). Moreover, any incorrect docket entry transmitted to the appellate court can be corrected pursuant to the procedures in Rule 8(e).

Removing this requirement eliminates the need for manual certification of the docket which consumes the time and effort of lower court personnel. In criminal cases, the prior requirement that an original and one copy of the transcript be transmitted was revised to a single electronically-formatted transcript. These amendments reflect current practice regarding the information required by the appellate courts from the lower court for entry of an appeal.

Prior Rule 9(e), titled "Record for Preliminary Hearing in the Appellate Court," was deleted because other rules currently provide processes for parties to obtain the relief that had been provided for in that rule. See Rules 2, 6, and 15.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2002)

Rule 9(c)(2) was amended in 2002 to reduce the time period after the filing of a notice of appeal from 40 to 10 days in which the appellant in a civil case must deliver to the clerk of the lower court either the transcript or a certification that the appellant has ordered the transcript from the court reporter.

This amendment serves to bring Rule 9(c)(2) in line with the requirement of Rule 8(b)(1) that the appellant must order the transcript within ten days of filing the notice of appeal.

A further change was made in the first sentence of Rule 9(c)(2). Prior to the 2002 amendment, that sentence required the appellant to provide to the clerk of the lower court either (1) a transcript of the proceedings which the appellant deems necessary or (2) a statement that the appellant has ordered such transcript. A third option, (iii), has been added for cases where the appellant is not ordering the transcript (or any portion thereof). The appellant, by certifying that no transcript has been ordered and that the appellant does not intend to order the transcript, will thereby put the

appellee on notice that the appellee must, if a transcript is desired, take steps to order the transcript. See Rule 8(b)(1).

(1994)

[Rule 9(c)(2)] There has been an ambiguity in Mass. R.A.P. 9(c)(2) in those cases in which there has been an electronically recorded proceeding in trial court. Rule 9(c)(2) calls for the appellant, within forty days after filing the notice of appeal, to deliver to the clerk of the trial clerk either portions of the transcript or a signed statement certifying that the appellant has ordered such portions from the court reporter. Rule 8(b)(3), covering electronically recorded proceedings, has distinct provisions for obtaining a transcript which do not mesh perfectly with Rule 9(c)(2). For instance, as the dissent of Justice O'Connor (with whom Wilkins and Greaney, JJ. joined) explained in Russell v. McOwen-Hanelt, 413 Mass. 106, 114 (1992), the appellant in that case had a minimum of fifty-six days to order transcription of the cassette, so that the forty day notice provision in Rule 9(c)(2) did not fit. Nonetheless, in that case, the majority, relying on Hawkins v. Hawkins 397 Mass. 401, 406 (1986), read Rule 9(c) to require the appellant in appeals from electronically recorded proceedings "'to deliver either a transcript or a signed statement certifying that the tapes [are) being transcribed, to the clerk or register's office, [no later than] forty days after [the] appeal was filed.'" Russell v. McOwen-Hanelt, at 109.

The Standing Advisory Committee believes that Rule 9(c)(2) should be clarified so that henceforth it does not apply to electronically recorded proceedings. There are special problems when a tape recorder rather than a stenographer has been used to record a trial. For instance, an appellant must order and receive the cassette from the lower court before the designation process can begin and a person or firm must be selected to prepare the transcript. Consequently, the requirements in Rule 8(b)(3) are different from those in Rule 9(c)(2). This amendment resolves the previous ambiguity by creating an exception from the requirements of Rule 9(c)(2) where there has been an electronically recorded proceeding covered by Rule 8(b)(3). This amendment renders inapplicable the contrary holding in Russell v. McOwen-Hanelt, 413 Mass. 106 (1992) and Hawkins v. Hawkins, 397 Mass. 401 (1986).

(1994)

At several places in this Rule, and in Rule 8, the word "record" or the words "record on appeal" are used. It is critical that litigants realize that there is a profound difference between the "record" and the "appendix." The record is what the lower clerk assembles and retains "until the final disposition of the appeal, except as the record or any part of it is ordered to be transmitted by the appellate court or a single justice." Mass. R.A.P. 9(a). The appendix is what the appellant must file in accordance with Mass. R.A.P. 18. A 1993 amendment to Mass. R.A.P. 18, which was made to reflect the language of Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 810-812

(1992), emphasizes “the responsibility of the parties to include materials necessary to their appeal, including exhibits, in the appendix.”

It is important to realize that when Mass. R.A.P. 9(b) says that “[n]o exhibit need be reproduced for the record, except by order of an appellate court, a single justice, or the judge of the lower court,” it is talking about “the record” and not “the appendix.” The fact that the rule goes on to say that “[a]ny counsel may reproduce any exhibit in several copies for the convenience of the court,” also does not relieve the parties of their obligation to put copies of exhibits they rely upon in the appendix in accordance with Mass. R.A.P. 18.

(1986)

[Rule 9(b)] This rule, inter alia, requires the clerk of the lower court to “transmit any exhibit to the appellate court at the request of any party made at any time after the filing of the record appendix.” It is important to realize, however, that the transmittal of such exhibits does not automatically permit lawyers to refer to them. Rule 18 (a) states that “. . . the court may decline to permit the parties to refer to portions of the record omitted from the appendix, unless leave be granted prior to argument.” See Iverson v. Board of Appeals of Dedham, 14 Mass. App. Ct. 951 (1982).

(1979)

Subdivision (a) of Rule 9, as made applicable to criminal cases, supersedes the provisions of former G.L. c. 278, § 33C (St.1974, c. 458, § 1) relative to the preparation of the record. Subdivision (b), relative to exhibits, is amended by the addition of a sentence which restates the substance of the first sentence of former Appeals Court Rule 1:06(3) (1975: 3 Mass. App. Ct. 802) and Supreme Judicial Court Rule 1:06(3) (1975: 366 Mass. 858-59). Subdivision (b) was previously incorporated into criminal appellate procedure by Appeals Court and Supreme Judicial Court Rules 1:06(1) (1975: 3 Mass. App. Ct. 802; 366 Mass. 858), except that “record appendix” in the appellate rule was taken to mean “record” in the context of a criminal appeal. This provision, which states that certain risk-associated exhibits are not to be transmitted to the appellate court absent an order, is applicable in civil as well as criminal cases.

Subdivision (c) is amended by limiting the forty-day time for appellants’ assistance in assembly of the record to civil cases, and by requiring the appellant in a criminal case to forthwith perform any act reasonably necessary to enable the clerk to assemble the record. The provision for delivery to the clerk of the necessary parts of the transcript for inclusion in the record in civil cases is inapplicable to criminal cases since the clerk orders the transcript, makes and distributes the required copies to the parties and transmits the original and a copy to the appellate court, (Rule 8[b][2]). The entire transcript is included unless the parties stipulate otherwise (Id.).

The requirement of subdivision (d) that the clerk of the lower court transmit two copies of the docket entries to the appellate court in a criminal case conforms to procedure under former Appeals Court and Supreme Judicial Court Rules 1:09 (1975: 3 Mass. App. Ct. 802; 366 Mass. 859). Subdivision (d) additionally provides that the original and one copy of the transcript (see Rule 8[b][2]) and a list of all the exhibits (see former Appeals Court and Supreme Judicial Court Rules 1:06[3], supra) shall be transmitted with the record.

(1973)

Appellate Rule 9, changing federal practice (which requires transmission of the entire record in all cases, see F.R.A.P. 11) responds to the Massachusetts practice of not sending the actual original papers to the appellate court. The rule, however, recognizes that occasionally it may be essential for such papers to be transmitted, and thus requires the clerk to assemble all the original papers in a case, including a transcript if any, and hold them, subject to an order by the appellate court to transmit the record to that court. The appellant must take whatever action is necessary to assure assembly; failure to do so jeopardizes the appeal, see Appellate Rule 10(c).

RULE 10: DOCKETING THE APPEAL

(a) Docketing the Appeal

(1) Civil Cases

(A)

Within 14 days after receiving from the clerk of the lower court the notice of assembly of the record, each appellant, including each cross-appellant and each appellant in a joint appeal, shall pay to the clerk of the appellate court the docket fee required by law or request waiver of the fee, and the clerk shall thereupon enter the appeal of such appellant or cross-appellant upon the docket. If an appellant is authorized to prosecute the appeal without payment of fees, the clerk shall enter the appeal upon the docket at the written request of a party.

(B)

When payment or request for waiver is made by first class mail or its equivalent, it shall be deemed timely if accompanied by a certificate attesting that the day of mailing was within 14 days of receipt of the notice of assembly.

(2) Criminal Cases

Upon receipt of the notice of assembly of the record, pursuant to Rule 9(e), the clerk of the appellate court shall enter the appeal upon the docket.

(3) In General

Upon docketing of the appeal, the clerk shall serve written notice thereof upon each party and the clerk of the lower court. Upon motion, the lower court or a single justice of the appellate court may, for cause shown, enlarge the time for docketing the appeal or permit the appeal to be docketed out of time. An appeal shall be docketed under the title given to the action in the lower court, with the appellant identified as such, but if such title does not contain the name of the appellant, then the party's name, unless permitted to proceed under a pseudonym, identified as appellant, shall be added to the title.

(4) Certain Constitutional Claims

Within 14 days after the docketing of any civil appeal that draws into question the constitutionality of an act of the legislature, if neither the Commonwealth nor an officer, agency, or employee thereof is a party to the appeal, the party asserting the unconstitutionality of the act shall notify the attorney general of such challenge. If such a question becomes apparent to a party after the 14-day period has expired, the party shall immediately notify the attorney general. Such notice shall be given either in writing or by use of any electronic method the attorney general may designate for this purpose.

(5) Consolidated Appeals

Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, on such terms as the court may order.

(6) Joint Appeal

Upon entry of an appeal pursuant to Rule 10(a)(1) or 10(a)(2), parties who have filed a joint notice of appeal shall proceed on appeal as a single appellant, unless upon motion the appellate court grants leave to proceed separately.

(7) Cross Appeals

If a cross appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of these Rules. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement, filed with the appellate court, or by court order.

(b) Filing

The clerk of the appellate court shall file upon receipt any part of the record or any document authorized to be filed in lieu of the record under any provision of Rule 9, following timely docketing of the appeal. The clerk shall immediately give notice to all parties of the date of each such filing.

(c) Dismissal for Failure of Appellant in a Civil Case to Comply With Rule 9(d) or Rule 10(a)

If any appellant in a civil case shall fail to comply with Rule 9(d) or Rule 10(a)(1), the lower court may, on motion with notice by any appellee, dismiss the appeal, but only upon a finding of inexcusable neglect; otherwise, the court shall enlarge the appellant's time for taking the required action. If, prior to the lower court's hearing such motion for noncompliance with Rule 9(d), the appellant shall have cured the noncompliance, the appellant's compliance shall be deemed timely.

(d) Withdrawal of Counsel

In all cases, any counsel who does not intend to continue representing a client on appeal, for any reason, should file a motion to withdraw his or her appearance in the lower court as soon as is practicable. After an appeal has been docketed in an appellate court, any motion to withdraw appearance of counsel shall be filed with the appellate court. The motion shall include a certificate of service in compliance with Rule 13, which shows service upon all parties to the appeal, including those represented by counsel filing the motion, at the party's or parties' last known address.

Rule History

Amended June 27, 1974, effective July 1, 1974; amended effective February 24, 1975; amended May 15, 1979, effective July 1, 1979; amended effective May 1, 1994; amended July 28, 1999, effective September 1, 1999; amended effective October 1, 2001; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 10(a)(1)(A) contains the entirety of prior Rule 10(a)(1) and was amended to expand the time period to docket the appeal from 10 to 14 days. The subparagraph was also amended to specify

that when the lower court has authorized the appellant to proceed on appeal without payment of fees, the docketing of the appeal in the appellate court will proceed upon the "written request" of the appellant. This amendment clarifies that verbal requests to docket the appeal are not permitted.

Rule 10(a)(1)(B) is a new subparagraph which provides that the payment or request for waiver of the docket fee is timely if accompanied by a certificate attesting that the day of its mailing was within 14 days of the appealing party's receipt of the lower court's notice of assembly of the record.

Rule 10(a)(2), concerning the automatic docketing of criminal appeals in the appellate court, was revised to delete the clause in the prior rule authorizing docketing upon approval by the lower court of an agreed statement pursuant to Rule 8(d). This amendment is necessary because, even in Rule 8(d) situations, a notice of assembly should issue. Related revisions to Rule 9(e) also clarify that the notice of assembly should issue in this circumstance and provides a timeframe within which the notice should issue.

Rule 10(a)(3) contains new language to provide that an appellate court clerk should not add a party's name to the title of an appeal if that party has been permitted to proceed under a pseudonym.

Rule 10(a)(4) is a new paragraph added to provide notice to the Office of the Attorney General of constitutional challenges to acts of the legislature. The paragraph is modelled after existing Mass. R. Civ. P. 24(d) and Fed. R. Civ. P. 44(b), with minor changes to specify the timing and manner of notice.

Rule 10(a)(5) is a new paragraph that addresses consolidated appeals. The substance of this paragraph was moved from prior Rule 3(b). Rule 3 prescribes how an appeal is taken, and relates to actions the appealing party must take in the lower court to initiate an appeal. In contrast, Rule 10 is concerned with docketing an appeal and consolidation happens at the time of, or after, the docketing of the appeal in the appellate court. Relocating the paragraph from Rule 3(b) to Rule 10(a) presents it in a more appropriate context.

Rule 10(a)(6) is a new paragraph that addresses joint appeals. Pursuant to prior Rule 3(b), parties with similar interests could file a joint notice of appeal in the lower court or could join in an appeal after filing separate notices of appeal and then proceed on appeal as a single appellant, but still needed to enter their cases separately in the appellate court. This caused confusion for parties who sought to pay one docketing fee on behalf of all parties who have joined in an appeal. Rule 10(a)(6) clarifies that, when an appeal is docketed in the appellate court and the parties file a joint notice of appeal, they shall automatically proceed as a single appellant without leave of court. If

the parties' interests are aligned, judicial economy and efficiency are advanced by having them proceed in the appellate court as a single appellant.

Rule 10(a)(7) is a new paragraph that encompasses the content of the first sentence in prior Rule 16(j), which concerned the designation of parties to a cross-appeal. Moving this provision to Rule 10(a)(7) clarifies for the parties at the outset of the appeal which party is the appellant and which is the appellee. In addition to relocating the provision, the designation of the parties was revised to deem the party filing the first notice of appeal as the appellant, absent agreement or court order otherwise, consistent with Fed. R. App. P. 28.1(b).

Rule 10(c) applies to an appellant's compliance with Rules 9(d) and 10(a). The reference to Rule 10(a)(3) was removed from the first sentence of this subdivision because Rule 10(a)(3) applies to clerks, not appellants.

Rule 10(d) is a new subdivision added to resolve confusion on the part of attorneys who have appeared in the lower court but seek to withdraw from representation for purposes of an appeal. Adding this subdivision clarifies that, after an appeal is docketed in the appellate court, a motion to withdraw must be filed in the appellate court, not the lower court. This will reduce confusion as to which court the motion should be filed in after an appellate court has jurisdiction of a case.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2001)

[Rule 10(a)(1)] Prior to amendment in 2001, the first sentence of Appellate Rule 10(a)(1) provided that "the appellant" was to pay the docket fee to the clerk of the appellate court within ten days after receipt of notice of the assembly of the record or approval of an agreed statement. Where there have been multiple appellants or cross-appeals, the appellate clerks have required each appellant or cross-appellant to pay a separate docket fee. The 2001 amendment makes clear that separate docket fees are required.

(1999)

[Rule 10(a)] The 1999 amendments to Appellate Rule 10(a) were part of a comprehensive set of amendments to the Appellate Rules (Rules 1, 3, 4, 8, and 10) that had been proposed by the

Supreme Judicial Court Committee on Appeals of Child Welfare Cases. The purpose of the 1999 amendments is described in the 1999 Reporter's Notes to Appellate Rule 1(c).

Prior to the 1999 amendment, Appellate Rule 10(a)(3) required that upon the docketing of the appeal in the appellate court, the clerk serve written notice of the docketing upon each party. The 1999 amendment requires that the clerk of the appellate court also serve written notice on the clerk of the lower court whose decision is subject to the appeal.

It is significant to note that although the 1999 amendments were part of a package of amendments that related to child welfare appeals, the amendment to Appellate Rule 10(a)(3) applies not only to child welfare appeals, but all other appeals as well.

(1994)

[Rule 10(c)] This amendment eliminates noncompliance with Mass. R.A.P. 10(a)(1) (the appellant's obligation to pay the docket fee within the ten day period described in Mass. R.A.P. 10(a)(1)) from the instances of noncompliance that can be cured prior to a hearing on a motion to dismiss for noncompliance. Noncompliance with Rule 9(c) (appellant's obligations re: assembly of the record and transmission of the transcript) can still be cured prior to a hearing for dismissal based on such noncompliance.

Many lawyers and pro se litigants relied on the previous version of the last sentence of Mass. R.A.P. 10(c) as their rationale for paying the filing fee only after there had been a motion to dismiss and before the lower court's hearing of such a motion, even though Mass. R.A.P. 10(a)(1) specifically required the payment "[w]ithin ten days after receiving from the clerk of the lower court notice of assembly of the record, or of approval by the lower court of an agreed statement . . ." Although the last sentence of Rule 10(c) seemed to permit such late payment as a matter of right, the practice in the Appeals Court was to refuse to accept a docket fee sent by the appellant subsequent to the ten day period described in Rule 10(a)(1) even if it was paid before a hearing described in Rule 10(c). The appellant who attempted to file the fee late was told that he or she must be successful on a motion to docket late in order for the Appeals Court to accept the payment, and that this motion would not ordinarily be entertained by the single justice while a motion to dismiss was pending in the trial court.

The prior wording of the last sentence of Rule 10(c) was therefore misleading to appellants who thought they had a right to pay the fee after the ten day period but before the hearing on a motion to dismiss; moreover, the practice of the Appeals Court may have been in disregard of the clear language of the same sentence. It does not make sense to have a ten day period in which to pay a filing fee which is widely ignored. Consequently, this amendment removes the excuse and automatic permission to pay the fee late and also makes the Rule in accord with the practice of

the Appeals Court. This amendment in no way eliminates or alters the right of an indigent pro se litigant to obtain a waiver of the obligation to pay the filing fee.

Reporter's Notes (1979) The substance of former subdivision (a) has been divided into subdivisions (a)(1), applicable to civil cases, and (a)(3), applicable to both civil and criminal cases.

Subdivision (a)(2), which provides for the automatic docketing of an appeal in a criminal case upon receipt by the clerk of the appellate court of notice of assembly of the record or approval of an agreed statement, is added.

The provision of a subdivision (a)(3) for notice to the parties of the docketing of a criminal appeal conforms to prior practice under former Appeals Court Rule 1:11 (1975: 3 Mass. App. Ct. 803) and Supreme Judicial Court Rule 1:11 (1975: 366 Mass. 860).

Since in a criminal appeal the appellant is responsible neither for initiating assembly of the record (see Rules 8[b][2], 9[c]) nor for taking any step to docket the appeal ([a][2], supra), subdivision (c) is limited in application to civil cases.

(1975)

The amendment requires the clerk to give written notice of the docketing to counsel for each party (or to each unrepresented party directly). This ensures that all parties receive notice of the docketing date, which is the starting point for various periods under the Rules; see, e.g., Appellate Rules 11, 11.1, and 19.

In Appellate Rule 10(c) substitution of "Rule 9(c)" for "Rule 9(b)" merely corrects a previous typographical error.

(1973)

Appellate Rule 10 covers the mechanics of docketing the appeal in the appellate court.

RULE 11: DIRECT APPELLATE REVIEW

(a) Application; When Filed; Grounds

An appeal within the concurrent appellate jurisdiction of the Appeals Court and Supreme Judicial Court shall be docketed in the Appeals Court before a party may apply to the Supreme Judicial Court for direct appellate review. Within 21 days after the docketing of an appeal in the Appeals Court, any party to the case (or 2 or more parties jointly) may apply in writing to the Supreme Judicial Court for direct appellate review, provided the questions presented by the appeal are (1)

questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

(b) Contents of Application; Form

The application for direct appellate review shall contain, in the following order: (1) a request for direct appellate review; (2) a statement of prior proceedings in the case; (3) a short statement of facts relevant to the appeal; (4) a statement of the issues of law raised by the appeal, together with a statement indicating whether the issues were raised and properly preserved in the lower court; (5) a brief argument thereon (consisting of not more than either 10 pages of text in monospaced font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) including appropriate authorities, in support of the applicant's position on such issues; and (6) a statement of reasons why direct appellate review is appropriate. A copy of the docket entries shall be appended to the application. The applicant shall also append a copy of any written decision, memorandum, findings, rulings, or report of the lower court relevant to the appeal. The application shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).

(c) Response; Form

Within 14 days after the filing of the application, any other party to the case may, but need not, file and serve a response thereto (consisting of not more than either 10 pages of text in monospace font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) setting forth reasons why the application should or should not be granted. The response shall not restate matters described in Rule 11(b)(2) and (3) unless the party is dissatisfied with the statement thereof contained in the application. The response shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k). A response may be filed in a different form as permitted by the court.

(d) Filing; Service

One copy of the application and of each response shall be filed in the office of the clerk of the full Supreme Judicial Court. Filing and service of the application and of any response shall comply with Rule 13.

(e) Effect of Application Upon Appeal

The filing of an application for direct appellate review shall not extend the time for filing briefs or doing any other act required to be done under these rules.

(f) Vote of Direct Appellate Review; Certification

If any 2 justices of the Supreme Judicial Court vote for direct appellate review, or if a majority of the justices of the Appeals Court shall certify that direct appellate review is in the public interest, an order allowing the application (or transferring the appeal sua sponte) or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court with notice to the lower court. The clerk of the Appeals Court shall forthwith transmit to the clerk of the full Supreme Judicial Court all documents filed in the case.

(g) Cases Transferred for Direct Review; Time for Serving and Filing Briefs

In any appeal transferred to the full Supreme Judicial Court from the Appeals Court:

(1) If at the time of transfer all parties have served and filed briefs in the Appeals Court, no further briefs may be filed by the parties except that a reply brief may be served and filed on or before the last date allowable had the case not been transferred, or within 14 days after the date on which the appeal is docketed in the full Supreme Judicial Court, whichever is later.

(2) If at the time of transfer only the appellant's brief has been served and filed in the Appeals Court the appellant may, but need not, serve and file an amended brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court. The appellee shall serve and file a brief within 30 days after service of any amended brief of the appellant, or within 50 days after the date on which the appeal is docketed in the full Supreme Judicial Court, whichever is later.

(3) Service and filing of a reply brief shall comply with Rule 19.

(4) If at the time of transfer to the full Supreme Judicial Court no party to the appeal has served or filed a brief, the appellant shall serve and file a brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court or within 40 days after the date on which the appeal was docketed in the Appeals Court, whichever is later.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended effective July 1, 1991; amended effective April 14, 1995; amended effective January 29, 1996; amended October 30, 1997, effective January 1, 1998; amended June 26, 2002, effective September 3, 2002; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 11(a) was amended to remove the statement that no oral argument will be allowed in support of an application for direct appellate review. Oral argument is not ordinarily permitted under this rule and removing the reference to oral argument is consistent with Supreme Judicial Court practice.

Rule 11(d) was revised to reduce the number of copies of an application or response to an application for direct appellate review that must be filed from "an original and seventeen copies" to 1 copy. Due to advances in paperless practices, the Supreme Judicial Court now only requires 1 copy to properly process and review these documents. The requirement that a copy of the application be filed in the Appeals Court was deleted because the Appeals Court receives automatic notification from the Supreme Judicial Court when an application for direct appellate review is filed.

Rule 11(f) was revised to align the rule with court practices. According to the prior rule, although the Supreme Judicial Court entered and sent notice of an order granting direct appellate review, the order would not actually be "deemed granted" until the Appeals Court received it.

The amendments to this rule delete the phrase "upon receipt, direct appellate review shall be deemed granted" to clarify that the order is effective upon its entry. Rule 11(f) was also amended to substitute the Supreme Judicial Court in place of the Appeals Court as the court sending notice to the lower court when direct appellate review is granted.

Rule 11(g)(1) was amended by inserting "by the parties" after "If at the time of transfer all parties have served and filed briefs in the Appeals Court, no further briefs may be filed" to clarify that in cases that are fully briefed prior to transfer, the prohibition against filing additional briefs does not apply to amicus briefs.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2002)

In 2002, the Supreme Judicial Court amended Appellate Rule 11(b) to require that an application for direct appellate review contain "a statement indicating whether the issues were raised and properly preserved in the lower court" and that "a copy of any written decision, memorandum, findings, rulings, or report of the lower court relevant to the issues on appeal" be appended to the application. Having a statement regarding whether issues were raised below and a copy of the lower court's decision will serve to benefit the court's determination in considering the application for direct appellate review.

(1999)

The cover of applications for direct appellate review shall be white. See Appellate Rule 20(b), as amended in 1999.

(1997)

[Rule 11(d), effective January 1, 1998] The 1997 amendment to Appellate Rule 11(d) increased to seventeen the number of copies of an application for direct appellate review and of each opposition to be filed in the clerk's office of the Supreme Judicial Court. The amendment also clarified that an original is to be filed together with seventeen copies.

(1996)

[Rule 11(f)] The 1996 amendment to Mass.R.A.P. 11(f), effective January 29, 1996, is a technical amendment to that portion of the first sentence relating to certification that direct appellate review by the Supreme Judicial Court is in the public interest. The amendment provides for certification by "a majority of the justices of the Appeals Court," replacing earlier language providing for certification by "all of the justices of the Appeals Court or any majority thereof."

(1991)

[Rule 11(g)(4)] The amendment to Mass. R.A.P. 11(g)(4) reduces the time the appellant has to file a brief in a case transferred to the full Supreme Judicial Court if at the time of the transfer no party to the appeal has served or filed a brief. The new time period is "within twenty days after the date on which the appeal is docketed in the full Supreme Judicial Court or within forty days after the date on which the appeal was docketed in the Appeals Court, whichever is later." The prior rule permitted the appellant to serve and file the brief within forty days of docketing a transferred case

in the Supreme Judicial Court. The amendment should help increase the number and percentage of Supreme Judicial Court cases ready for hearing each month. It also helps conform the period for filing briefs in a transferred case with the policy stated in Mass. R.A.P. 11(e) that "[t]he filing of an application for direct appellate review shall not extend the time for filing briefs. . . ."

(1979)

[Rule 11(a)] Appellate Rule 11 was previously applicable to direct appellate review in criminal cases by virtue of Supreme Judicial Court Rule 3:24, § 4(1) (1975) 366 Mass. 870, (1975) except that the words "the appeal is docketed" were taken to mean "the case is entered." That distinction is no longer viable (see Rule 10[a][2]).

Only two changes are made in the former rule. A new first sentence is added to subdivision (a), which restates the first sentence of Supreme Judicial Court Rule 3:24 supra § 3. Section 3 also provided that:

> All matters preliminary to the entry of . . . appeals [within the concurrent appellate jurisdiction of the Appeals and Supreme Judicial Court] which require action by an appellate court shall be presented to and disposed of by the Appeals Court.

That requirement is implicit in Rule 11.

Secondly, the time within which an application for direct appellate review may be filed is increased from ten to twenty days after the docketing of the appeal in the Appeals Court. The remainder of the rule is unchanged.

(1973)

Appellate Rule 11 implements the statutorily-authorized direct review by the Supreme Judicial Court of cases which would otherwise first be heard and determined in the Appeals Court; G.L. c. 211A, § 10. (For procedure subsequent to an Appeals Court decision, see Appellate Rule 27.1.) Direct review may result if: (1) The Supreme Judicial Court (or two justices thereof) shall so order, either (a) sua sponte, or (b) on application of one or more parties; or (2) The Appeals Court (or a majority of the justices thereof) shall certify that direct review is in the public interest.

The rule deals with the mechanics of application for direct review, and also prescribes the procedure governing cases accorded direct review, no matter what the means which caused such review (order by the Supreme Judicial Court ex mero motu, order on application, or certification by the Appeals Court).

Of the routes to direct review, only one—Supreme Judicial Court order after application—ought appropriately to be governed by the Appellate Rules. The other two, self-initiated exercises of judicial discretion and administration, are intracourt matters not subject to procedural regulation.

What Appellate Rule 11(a)-(d) accomplishes, therefore, is to assure appellate parties the right to put the matter before the Supreme Judicial Court and to urge direct review; the rule leaves all other means by which review may be granted out of the parties' control entirely, and completely in the dispositive power of the respective courts.

The application for direct review proceeds parallel to the usual requirements, Appellate Rule 11(e). Application does not in any way "stop the clock" with respect to normal appellate procedure. Once review is granted, however, a special timetable controls, Appellate Rule 11(g). In general, any brief already filed in the Appeals Court need not be re-filed in the Supreme Judicial Court; if no party has yet filed, the briefing schedule, proceeding as though the appeal had commenced initially in the Supreme Judicial Court, is controlled by Appellate Rule 19.

RULE 11.1: TRANSFER FROM SUPREME JUDICIAL COURT

In the case of a direct appeal to the Supreme Judicial Court, except as to any appeal concerning a conviction of murder in the first degree, within 14 days after the appeal has been docketed, or such further time as a single justice upon motion for cause shown may allow, any party may serve and file a motion to transfer the appeal to the Appeals Court. The motion (a) shall not exceed either 5 pages of text in monospaced font or 1,000 words in proportional font, as defined in Rule 20(a)(4)(B); (b) shall succinctly specify the grounds for transfer; and (c) shall conform to Rules 13, 14, 15, and 20(b). Within 7 days after filing of the motion, any other party may serve and file a response to the transfer. The response (a) shall not exceed either 5 pages of text in monospaced font or 1,000 words in proportional font, as defined in Rule 20(a)(4)(B); (b) shall succinctly specify the reasons why transfer should or should not be granted; and (c) shall conform to Rules 13, 14, 15, and 20(b).

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 11.1 was revised to add the word count alternative to page limits, explained in the Reporter's Notes to Rule 1. The phrase "except as to any appeal concerning a conviction of murder in the first degree" was added to explicitly exclude those appeals from transfer to the Appeals Court because the Appeals Court does not have concurrent appellate jurisdiction over such appeals. See G. L. c. 278, § 33E and G. L. c. 211A, § 10. Since the Supreme Judicial Court's practice is that oral argument is not ordinarily permitted in connection with a motion to transfer the appeal to the Appeals Court or response to such a motion, reference to such oral argument was deleted.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1973)

Appeals which have proceeded direct to the Supreme Judicial Court without application of a party, that is, on judicial certification or order, see Appellate Rule 11(f), have by definition not afforded the parties an opportunity to oppose direct review. (Review after application, of course, has resulted from a procedure permitting the party not applying for direct review to oppose it, Appellate Rule 11(c).) Appellate Rule 11.1 permits either party to an appeal which has been brought up to the Supreme Judicial Court without application to indicate any reason why the case should be transferred back to the Appeals Court.

RULE 12: PROCEEDINGS INVOLVING AN INDIGENT PARTY

(a) Leave to Proceed on Appeal as an Indigent Party from Lower Court to Appellate Court

Either a lower court or the appellate court or a single justice thereof, for cause shown and after reasonable notice, may authorize an appeal to be prosecuted by an indigent party, upon such reasonable terms as such court or justice may prescribe.

(b) Form of Briefs, Appendices, and Other Documents

Parties allowed to proceed as indigent may upon motion and with leave of the appellate court or a single justice thereof, file and serve a reduced number of copies of briefs, appendices, and other documents than otherwise required by these rules.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

References to "in forma pauperis" throughout Rule 12 were changed to "indigent party" consistent with the new definition of "indigent party" in Rule 1(c). See 2019 Reporter's Note to Rule 1(c).

Rule 12(b) was amended to both highlight that a party allowed under Rule 12(a) to proceed as indigent may seek to file a reduced number of copies of briefs, appendices, or other documents, and clarify that leave of court to do so is required. In addition, Rule 12(b) was amended to eliminate the reference to proceeding on the original record without producing an appendix or copies of the record. Proceeding on the original record was similarly stricken from Rule 18(f) and the reasons for the deletion are described in the Reporter's Notes to Rule 18.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1973)

Appellate Rule 12 regulates proceedings in forma pauperis, and works no serious change in existing practice. Unlike the cognate F.R.A.P. 24, it allows the justice entertaining the application to proceed in forma pauperis large discretion to tailor the terms of the order to the needs of the case.

RULE 13: FILING AND SERVICE

(a) Filing

Documents required or permitted to be filed in the appellate court shall be filed with the clerk.

(1) Filing Generally

Except as provided in Rule 13(a)(2), filing may be accomplished in hand, through any electronic means provided by the clerk or by first class mail or its equivalent, addressed to the clerk, but filing shall not be timely unless the documents are received by the clerk within the time fixed for filing, except that briefs and appendices shall be docketed on the date of receipt and shall be deemed timely filed if

(A) received within the time fixed for filing, or
(B) when filed by first class mail or its equivalent, they are accompanied by a certificate attesting that the day of mailing was within the time fixed for filing.

If a motion requests relief which may be granted by a single justice, the justice may permit the motion to be filed, in which event the justice shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(2) Documents Filed by a Self-Represented Party Confined in an Institution

If an institution has a system designed for legal mail, a self-represented party confined in an institution must use that system to receive the benefit of this rule. A document other than a notice of appeal filed by such party is timely if it is deposited in the institution's internal mail system on or

before the last day for filing and is accompanied by a signed certificate in compliance with Rule 13(a)(1)(B) setting out the date of deposit. If the document is not received by the last day for filing, the certificate shall give rise to a presumption of timely filing provided it shows compliance with this rule. Failure to attach the certificate shall not of itself render the document invalid or untimely, and the appellate court may permit the later filing of a certificate. The time period for the opposing party to file any response to the document runs from the date when the appellate court dockets the document.

(b) Service of All Documents Required

Copies of all documents filed by any party shall, at or before the time of filing, be served by a party on all other parties to the appeal or review.

(c) Manner of Service

Service may be personal or by first class mail or its equivalent. Personal service includes delivery of the copy to the party's mailing address. Service by first class mail or its equivalent is complete on mailing. Service may also be completed electronically with the consent of the party being served.

(d) Certificate of Service of All Documents Other than Briefs and Appendices

(1) Requirement

Documents presented for filing, other than a brief or appendix, shall contain a certificate of service. A certificate of service may appear on or be affixed to the document filed. The clerk may permit documents to be filed without a certificate of service but shall require such certificate to be filed promptly thereafter.

(2) Contents

A certificate of service shall be in the form of a statement certifying

(A) the date and manner of service;
(B) the name, mailing address, and, if known, electronic address of the person(s) served; and
(C) the printed and signed name, personal pronouns (if the attorney or self-represented litigant elects), Board of Bar Overseers (BBO) number, if any, mailing and electronic addresses, and telephone number of the person who made service, and if that person is affiliated with a firm or office, the office name.

(e) Certificate of Service of Briefs and Appendices

(1) Requirement

Briefs and appendices presented for filing shall be accompanied by a certificate of service. The certificate of service shall appear as a part of the brief being filed as required in Rule 16(a)(15).

(2) Contents

The certificate of service shall be in the form of a certification that includes

(A) the name of the court and the number of the case;
(B) the title of the case;
(C) the title of the brief;
(D) the party on whose behalf service was made;
(E) the printed and signed name, personal pronouns (if the attorney or self-represented litigant elects), Board of Bar Overseers (BBO) number, if any, mailing and electronic addresses, and telephone number of the person who made service, and, if that person is affiliated with a firm or office, the office name;
(F) the name and mailing address and, if known, electronic address of the person(s) served; and
(G) the date and manner of service.

Rule History

Amended October 23, 1989, effective January 1, 1990; amended October 31, 2018, effective March 1, 2019; amended effective May 7th, 2024.

Reporter's Notes

(2024)

The Supreme Judicial Court amended S.J.C. Rule 1:08 (1) (H) effective October 1, 2022, to permit filers to include their personal pronouns with the filer's name or signature. In 2024, the Massachusetts Rules of Appellate Procedure were amended to incorporate the option into Mass. R.A.P. 13(d)(2)(C) and 13(e)(2)(E). The amendment expressly allows people to include preferred personal pronouns on court filings. The information informs judges, opposing counsel, and court personnel of a person's pronouns in advance of a hearing or communication, and can help prevent inadvertent misidentification during legal proceedings. See J. Stanton & Y. Taylor, Utilizing and Normalizing Personal Pronouns in Legal Filings, Proceedings, and Communications, 67 B.B.J. #2 (Spring 2023).

(2019)

Rule 13(a)(1), prior Rule 13(a), was amended to incorporate modern means of service. A party may file either in hand, through any electronic means provided by the clerk, or by first class mail or its equivalent. The phrase "any electronic means provided by the clerk" includes any electronic filing system offered by the clerk. The phrase "first class mail or its equivalent" is new and defined in Rule 1(c). Rule 13(a)(1) was also amended to simplify the provision allowing a party to mail a brief to the appellate court on the day it is due and have the clerk deem it timely filed even when received after the due date. Instead of the past requirement of an affidavit attesting that the day of mailing of a brief was within the time fixed for filing, the new provision permits a certificate attesting the date is within the time. This certificate will provide the appellate court clerk with sufficient information to determine the date of mailing.

Rule 13(a)(2) is a new paragraph that incorporates the so-called "inmate mailbox rule" into the appellate rules and governs an incarcerated or civilly committed person's filing of briefs, motions, and other documents, except a notice of appeal, which is governed by Rule 4(d). Rule 13(a)(2) is intended to address the concerns highlighted by the Supreme Judicial Court in Commonwealth v. Hartsgrove, 407 Mass. 441, 445 (1990), as to the limitations of a person confined in an institution to effectuate the "mailing" of a document on a certain day. This provision is consistent with Rule 4(d) and Fed. R. App. P. 25(a)(2)(C). However, unlike the Federal rule, a party's certificate need not state that first-class postage has been prepaid because some Massachusetts institutions affix postage after the item leaves the inmate or civilly committed person's hands. Importantly, the rule is written to encompass filings by any self-represented person confined in an institution. This includes persons confined on criminal or civil grounds, such as a sexually dangerous person commitment or a court-ordered involuntary civil commitment for mental illness or for alcohol and substance abuse disorders. See Reporter's Note to Rule 4(d).

Rule 13(b) was revised to remove reference to service by the clerk. This amendment clarifies that it is the party's obligation to serve documents on all parties to the appeal. The clerk will still serve notice of the filing of a notice of appeal pursuant to Rule 3(d), but the filer always has the obligation to serve a copy of a document upon the parties to an appeal unless specifically provided otherwise.

Rule 13(c) was revised to explicitly allow electronic service where a party consents to such service.

Rules 13(d) and 13(e) are substantially revised subdivisions that detail the requirement for, and contents of, a certificate of service. Rule 13(d) governs all documents other than briefs and appendices, which are governed by Rule 13(e). Under both subdivisions, a party must include in the certificate of service the electronic and mailing addresses of the person served. The inclusion of this information promotes consistency with the electronic-filing procedures implemented in the

appellate courts. Prior Rule 13(d)'s provisions allowing acknowledgment by the person served as an alternative to proof of service and requiring a statement under the penalties of perjury were struck. The revised subdivisions are consistent with Mass. R. Civ. P. 5(d)(1) and Mass. R. Crim. P. 32(b), which do not require the certificate of service to be made under the penalties of perjury.

Rule 13(e)(1) is a new subdivision that requires the certificate of service of a brief and appendix be contained within the brief itself. This requirement is intended to simplify the process of filing a brief. This language departs from the Appeals Court's prior practice of requesting parties to file a separate certificate of service. Finally, Rule 13(e)(2) specifies the contents of a certificate of service of a brief and appendix, and contains additional requirements than a Rule 13(d) certificate of service for other documents.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1989)

[Rule 13(a)] Mass. R. A. P. 31(b) requires that "[a]ll papers filed with the clerk . . . shall be entered chronologically in the docket . . ." But prior to this amendment, Mass. R. A. P. 13(a) stated that "briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is used." This clash in language has caused some problems for clerks, including additional clerical time spent modifying computerized dockets. The amended rule requires briefs and appendices be docketed on the date of receipt, but by utilizing affidavits by counsel, continues to permit counsel to mail within the time fixed for filing, even if receipt at the clerk's office is subsequent thereto. Consequently, there will no longer be a need for asterisks or other special notations on the dockets.

(1973)

Appellate Rule 13 governs filing and service requirements. Papers may be filed by mail; they must be actually received by the clerk within the filing deadline, except that briefs and appendices are regarded as having been filed upon mailing so long as the most expeditious form of mailing is utilized; special delivery need not be used. Service as between parties is, if accomplished by first class mail, complete upon mailing. Personal service may be made to a responsible person in the office of counsel for the recipient.

RULE 14: COMPUTATION AND EXTENSION OF TIME

(a) Computation of Time

In computing any period of time prescribed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall extend until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" means those days specified in G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States or so designated by the laws of the Commonwealth.

(b) Enlargement of Time

The appellate court or a single justice of the appellate court in which the appeal will be, or is, docketed for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but neither the appellate court nor a single justice may enlarge the time for filing a notice of appeal beyond 1 year from the date of entry of the judgment or order sought to be reviewed, or, in a criminal case, from the date of the verdict or finding of guilt or the date of imposition of sentence, whichever date is later.

(c) Additional Time After Service by First Class Mail or Its Equivalent

Whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by first class mail or its equivalent, 3 days shall be added to the prescribed period.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 14(b) was revised by adding text to clarify that the single justice referred to is a single justice of the appellate court in which the appeal will be or is docketed.

Rule 14(c) was revised to be consistent with the new definition in Rule 1(c) of "first class mail or its equivalent."

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

[Rule 14(b)] The only change in Rule 14 is the addition to subdivision (b) of language restricting the appellate court's power to enlarge the time within which a notice of appeal may be filed in a criminal case to no longer than one year after the date of the verdict or finding of guilt or the date of the imposition of sentence, whichever date is later. Compare Rule 4(c), which limits any extension granted by the lower court to no more than sixty days after verdict or sentence. The failure of a party to notice his appeal prior to the expiration of the thirty-day limit of Rule 4(b), or within sixty days if extended may be rectified by the appellate court, or a single justice as long as it does not extend beyond one year past verdict or sentence.

(1973)

Appellate Rule 14(a), dealing with computation of time, follows Mass. R. Civ. P. 6. By countenancing enlargement of appeal time up to one year after entry of the order or judgment appealed from, Appellate Rule 14(b) relaxes the cognate F.R.A.P. 26(b). Read together, Appellate Rules 4 and 14(b) mean that an "excusable neglect" extension may be granted only on such terms as to cause the extension to expire within the one-year period prescribed by Appellate Rule 14(b).

RULE 15: MOTIONS

(a) Content of Motions; Response; Reply

Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service upon all other parties. The motion shall comply with Rule 20(b)(2) and shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, shall set forth the order or relief sought, and, if known, should state whether the motion is assented to, or that no other party is in opposition, or if any party intends to file an opposition or other response. If a motion is supported by briefs, affidavits, or other documents, they shall be served and filed with the motion. Any party may file a response to a motion other than for a procedural order (for which see Rule 15(b)) within 7 days after service of the motion, but motions authorized by Rule 6 may be acted upon after reasonable notice, and the appellate court or a single justice may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders

Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders, including any motion under Rule 14(b), may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

(c) Power of a Single Justice to Entertain Motions

In addition to the authority expressly conferred by these rules or by law, a single justice may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the appellate court may provide by order or rule that any motion or class of motions shall be acted upon by the appellate court. The action of a single justice may be reviewed by the appellate court.

(d) Motions for New Trial in Capital Cases

After the docketing of an appeal in a “capital case” as defined in G. L. c. 278, § 33E, and until the issuance of a rescript by the appellate court, any motion for a new trial pursuant to Massachusetts

Rule of Criminal Procedure 30 shall be filed in the appellate court and may be remitted to the trial judge for hearing and determination at such time as the appellate court may direct.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The second sentence of Rule 15(a) was revised to reference Rule 20(b) to clarify that the form of motions is governed by Rule 20(b).

Rule 15(b) continues to allow an appellate court or a single justice to act on motions for procedural orders at any time without awaiting a response thereto. Notwithstanding this authority, text was added to Rule 15(a) to express the appellate courts' preference for knowing, at the time a motion is filed, whether the motion is assented to or if it is known that any party opposes the motion, and, if so, whether the party intends to file an opposition or other response. The amendment is intended to encourage the parties to communicate about whether a response will be filed prior to the filing of a motion to avoid the unnecessary consumption of time, effort, and expense to both the parties and the appellate court. See Reporter's Note to Rule 1(a).

Rule 15(d) was revised to replace "murder in the first degree" with "'capital case' as defined in G. L. c. 278, § 33E" to encompass the statute's definition of a "capital case" as including certain habitual offender convictions in addition to convictions of murder in the first degree.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

[Rule 15(d)] Subdivision (d), drawn from G.L. c. 278, § 33E (as amended) merely recognizes that while after docketing, a motion for a new trial (Mass. R. Crim. P. 30) is required to be filed in the

appellate court, it should ordinarily be heard and determined by the trial judge (unless disabled, see Mass. R. Crim. P. 38[c]), since he is in a better position to weigh its merits. See, e.g., Commonwealth v. Grace, 370 Mass. 746 (1976). The need for familiarity with the trial proceedings may vary, however, as a function of the grounds asserted (e.g., newly-discovered evidence as opposed to a verdict allegedly against the weight of evidence).

(1973)

Appellate Rule 15 governs motion practice. Appellate Rule 15(c) permits a single justice to dispose of any motion except a motion to dismiss an appeal (and, of course, except as otherwise provided by the Appellate Court). For the required number of copies see Appellate Rule 19(b); for the form of motions, see Appellate Rule 20(b).

RULE 16: BRIEFS

(a) Brief of the Appellant

The brief of the appellant shall be formatted and paginated as provided in Rule 20(a)(4), and contain under appropriate headings and in the order here indicated:

(1) Cover

The cover of the brief shall contain the information identified in Rule 20(a)(6)(B).

(2) Corporate Disclosure Statement

A corporate disclosure statement, if required pursuant to Supreme Judicial Court Rule 1:21, shall be contained within the brief.

(3) Table of Contents

The table of contents shall list each section of the brief, including the headings and subheadings of each section, and the page on which they begin.

(4) Table of Authorities

The table of authorities shall list each case, statute, rule, and other authority cited in the brief, with references to each page on which it is cited. The authorities shall be listed alphabetically or numerically, as applicable.

(5) Statement of Issues

The statement of issues shall concisely and particularly describe each issue presented for review.

(6) Statement of Case

The statement of the case shall briefly describe the nature of the appeal, the procedural history relevant to the issues presented for review, with page references to the record appendix or transcript in accordance with Rule 16(e), and the disposition of these issues by the lower court.

(7) Statement of Facts

The statement of the facts shall describe the facts relevant to the issues presented for review, but need not repeat items otherwise included in the statement of the case, and each statement of fact shall be supported by page references to the record appendix or transcript in accordance with Rule 16(e).

(8) Summary of Argument

In a brief with more than 20 pages of argument, or more than 4,500 words if produced in a proportionally spaced font, there shall be a summary of the argument that contains a succinct, clear, and accurate statement of the arguments made in the body of the brief, which must not merely repeat the argument headings, and is to include page references to where in the body of the brief each argument is made.

(9) Argument

The argument shall contain:

(A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities and parts of the record on which the appellant relies. The appellate court need not pass upon questions or issues not argued in the brief; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues).

(10) Request for Attorney's Fees and Costs

Any request for appellate attorney's fees and costs must be included in the brief, with a citation to the authority therefor.

(11) Conclusion

The brief shall contain a short conclusion stating the precise relief sought.

(12) Signature Block

The signature block shall contain

(A) the printed and signed name(s), personal pronouns (if the attorney or self-represented litigant elects), Board of Bar Overseers (BBO) number(s), if any, mailing and electronic addresses, and telephone number(s) of the person(s) who prepared the brief, and, if any individual counsel is affiliated with a firm or office, the office name; and
(B) the date of signing.

(13) Addendum

An addendum, contained within the brief, shall consist of the following:

(A) a table of contents listing each item contained therein and the page on which it begins;
(B) any appealed judgment or order (including any written opinion, memorandum of decision, or findings of fact and conclusions thereon relating to an issue raised on appeal, including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court);
(C) copies of constitutional provisions, statutes, rules, regulations, or relevant parts thereof, as in effect at the relevant time, consideration of which is required for determination of the issues presented;
(D) a copy of any unpublished decision cited in the brief; and
(E) in a case where geographical facts are of importance, unless appropriate plans are reproduced in the printed record or record appendix, an outline plan (preferably based on exhibits in evidence). This outline plan should be suitable for reproduction on 1 page of the printed law reports.

(14) Certificate of Compliance

The certification required by Rule 16(k) shall be contained within the brief.

(15) Certificate of Service

The certificate of service required by Rule 13(e) shall be contained within the brief.

(b) Brief of the Appellee

The brief of the appellee shall conform to the requirements of Rule 16(a), except as follows:

(1) Statements of the Issues, Case, Facts, and Standard(s) of Review

Statements of the issues, of the case, of the facts, and of the applicable standard(s) of review need not be made unless the appellee is dissatisfied with the statements of the appellant.

(2) Argument

The argument shall contain the contentions of the appellee with respect to the issues presented, and the reasons therefor, with citations to the authorities and parts of the record on which the appellee relies.

(3) Addendum

The addendum shall include copies of items required by Rule 16(a)(13) insofar as pertinent to the issues argued by the appellee, even if included in the addendum of the appellant.

(c) Appellant's Reply Brief

The appellant may file a reply brief responding to the appellee's argument. No new issues shall be raised in the reply brief. No further briefs may be filed except with leave of the appellate court or a single justice. The reply brief shall comply with the requirements of Rule 16(a)(1), (3), (4), (9), and (11)-(15).

(d) References in Briefs to Parties

Parties will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court, or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the landlord," etc. If the name of a party has been impounded or has been made confidential by statute, rule, or court order, the party shall preserve confidentiality in briefs and oral arguments.

(e) References in Briefs to the Record

Any factual statement in a brief shall be supported by a citation to the volume number(s) and page number(s) at which it appears in an appendix, and if not contained in an appendix, to the volume number(s) and page number(s) at which it appears in the transcript(s) or exhibits volume(s). Only clear abbreviations may be used, for example RAII/55 (meaning Record Appendix volume II at page 55) or TRIII/231-232 (meaning Transcript volume III at pages 231-232). Any record material cited in

a brief must be reproduced in an appendix or transcript or exhibit volume. Any record material cited in a brief that is included in the addendum should also include a citation to the addendum. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reserved.

(g) Massachusetts Citations

Citations to Massachusetts decisions, statutes, and regulations shall be made only to the official report of the decision or to the official publication containing the statute or regulation, if any. References to decisions should include, in addition to the page at which the decision begins, a page reference to the particular material therein upon which reliance is placed, and the year of the decision.

(h) Length of Briefs in Cases Other than Cross Appeals

In any case other than a cross appeal, the length of briefs shall comply with Rule 20(a)(2).

(i) Briefs in Cases Involving Cross Appeals

In a cross appeal,

(1) the length of briefs shall comply with Rule 20(a)(3);
(2) the appellee's principal and response brief shall contain the issues and argument involved in the appellee's appeal as well as the answer to the brief of the appellant;
(3) the appellee may file a reply brief responding to the appellant's argument as to the issues presented by the cross appeal; and
(4) except with leave of the appellate court or a single justice, an appellee that has cross-appealed may file only a single brief in reply to the responses of multiple appellants to the issues presented by the cross appeal.

(j) Briefs in Cases Involving Multiple Appellants or Appellees

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal per Rule 10(a)(5),

(1) any number of either may join in a single brief or reply brief, provided appropriate notice is given to the clerk and other parties;
(2) any appellant or appellee may adopt by reference any part of the brief of another; and
(3) except with leave of the appellate court or a single justice, an appellee may file only a single brief in response to multiple appellant briefs, and an appellant may file only a single brief in reply to multiple appellee briefs.

(k) Required Certification; Non-complying Briefs

The last page of each brief shall include a certification by the party that the brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). The certification shall specify how compliance with the applicable length limit of Rule 20 was ascertained, by stating either (1) the name, size, and number of characters per inch of the monospaced font used and the number of non-excluded pages, or (2) 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. A brief not complying with these rules (including a brief that does not contain a certification) may be struck from the files by the appellate court or a single justice.

(l) Citation of Supplemental Authorities

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited. Filing and service of any letter pursuant to this paragraph shall comply with Rule 13.

(m) References to Impounded Material

Upon the filing of any brief or other document containing references to matters that are impounded or have been made confidential by statute, rule, or order, the party shall file a written notice with the clerk, with a copy to all parties, so indicating. Wherever possible, the party shall not disclose impounded material. Where it is necessary to include impounded material in a brief, the cover of the brief shall clearly indicate that impounded information is included therein.

(n) Amendment of Brief

On motion for good cause, the court may grant leave for a party to file an amended brief. The motion shall describe the nature and reason for the amendment. The party shall file with the motion the amended brief marked as such on the front page or cover. Except as the court otherwise orders, the filing of an amended brief has no effect on any filing deadlines.

Rule History

Amended effective February 24, 1975; amended May 15, 1979, effective July 1, 1979; amended May 25, 1982, effective July 1, 1982; amended November 17, 1986, effective January 1, 1987; amended November 24, 1987, effective January 1, 1988; amended effective May 5, 1989; amended effective February 1, 1991; amended effective January 1, 1992; amended effective January 1, 1997; amended June 11, 1997, effective July 1, 1997; amended December 1, 1998, effective January 1, 1999; amended February 5, 2003, effective March 3, 2003; amended effective October 1, 2005; amended October 31, 2018, effective March 1, 2019; amended March 5, 2020, effective April 1, 2020; amended effective May 7, 2024.

Reporter's Notes

(2024)

The Supreme Judicial Court amended S.J.C. Rule 1:08 (1) (H) effective October 1, 2022, to permit filers to include their personal pronouns with the filer's name or signature. In 2024, the Massachusetts Rules of Appellate Procedure were amended to incorporate the option into Mass. R.A.P. 16(a)(12)(A). The amendment expressly allows people to include preferred personal pronouns on court filings. The information informs judges, opposing counsel, and court personnel of a person's pronouns in advance of a hearing or communication, and can help prevent inadvertent misidentification during legal proceedings. See J. Stanton & Y. Taylor, Utilizing and Normalizing Personal Pronouns in Legal Filings, Proceedings, and Communications, 67 B.B.J. #2 (Spring 2023).

(2019)

Rule 16(a) was revised and reorganized to detail in sequential order the contents of an appellant's brief. The revised rule is organized as a checklist intended to assist the parties in preparing a brief in compliance with the Rules, and to eliminate any heretofore unreferenced requirements raised by other court rules or decisions. The rule cross-references Rule 20(a)(4) for brief formatting and pagination requirements.

Rule 16(a)(1) is a new paragraph that begins the checklist format. It merely cross-references Rule 20(a)(6), which sets forth color and contents of the cover of a brief.

Rule 16(a)(2) is a new paragraph that cross-references S.J.C. Rule 1:21, which requires the inclusion of a corporate disclosure statement in specified circumstances. The corporate disclosure statement is to be included immediately after the cover, and before the table of contents in a party's principal brief. See S.J.C. Rule 1:21.

Rules 16(a)(3) and 16(a)(4) are derived from prior Rule 16(a)(1) and provide the required format of the table of contents and table of authorities, respectively.

Rule 16(a)(5) continues the requirement from prior Rule 16(a)(2) for a statement of the issues presented. The rule was revised to highlight that the statement of issues is to describe each issue concisely and with particularity.

Rule 16(a)(6) continues the requirement from prior Rule 16(a)(3) that the brief include a statement of the case. The revised rule requires the statement of the case to include reference to the record appendix or transcript, a requirement that was required in prior Rule 16(e), although not expressly so stated. See also Fed. R. App. P. 28(a)(6).

Rule 16(a)(7) continues the requirement from prior Rule 16(a)(3) for a statement of facts relevant to the issues presented for review, with supporting references to the record. New language clarifies that the statement of facts need not repeat items included in the statement of the case. The rule also clarifies that each statement of fact must be supported by specific page references to the record appendix or transcript, similar to the requirements in prior Rules 16(a)(3) and 16(e).

Rule 16(a)(8) continues prior Rule 16(a)(4)'s requirement for a summary of the argument that does not merely repeat argument headings. Under prior Rule 16(a)(4), a summary of the argument was required only when the argument exceeded 24 pages. The page limit was reduced to arguments exceeding 20 pages, or equivalent length under the word count alternative if a proportionally spaced font is used. The paragraph continues to require page references to the pages in the body of the brief where each argument is presented. See also Fed. R. App. P. 28(a)(7).

Rule 16(a)(9) governs the argument portion of the brief and is derived from prior Rule 16(a)(4). The rule was divided into two subparagraphs, the first, Rule 16(a)(9)(A), concerning the argument section generally, and the second, Rule 16(a)(9)(B), concerning presentation of the individual issues. The final sentence of prior Rule 16(a)(4) was relocated to Rule 22, because it concerns oral argument ("Nothing argued in the brief shall be deemed waived by a failure to argue orally"). Rule 16(a)(9)(B) includes a new requirement, derived from Fed. R. App. P. 28(a)(8), that the party include the standard of review for each issue raised. The standard of review is a critical factor in every appeal, constituting the lens through which the court views the issues presented.

Rule 16(a)(10) is a new paragraph added to ensure litigants comply with the requirement derived from case law, that any request for attorney's fees and costs must be included in the brief. See Yorke Management v. Castro, 406 Mass. 17, 19 (1989). Such a request must be made even where the request is not based upon a fee-shifting statute. Beal Bank, SSB v. Eurich, 448 Mass. 9, 10 (2006). An appellate court may excuse or modify this requirement if the circumstances so warrant. Lowell v. Massachusetts Comm'n Against Discrimination, 65 Mass. App. Ct. 356, 358 (2006). This new rule also requires that a request for fees and costs identify the specific source (e.g., statute, court rule, or case law) which authorizes the request.

Rule 16(a)(11) continues the requirement of prior Rule 16(a)(5) for a conclusion to the brief that states the precise relief requested from the appellate court.

Rule 16(a)(12) delineates the requirements of the brief's signature block and expands upon prior Rule 16(a)(8). The signature block must include both the mailing and electronic addresses of the person who prepared the brief, whether by counsel or a self-represented party. This is consistent with amendments to Rules 13(e), 20(a)(6)(B), and 20(b)(2)(B).

Rule 16(a)(13) specifies the contents of the addendum to a principal brief. It contains substantially revised text relocated from prior Rules 16(a)(6) and 16(a)(7). The amendment was intended to consolidate into a single provision the various items required to be included in an addendum. Rule 16(a)(13)(A) requires the addendum to include a table of contents listing each item contained in the addendum and the page number on which the document begins. Rule 16(a)(13)(B) continues the requirement of prior Rule 16(a)(6) that a copy of any memorandum of decision or findings of the lower court be included in the addendum. The provision was expanded to require that when the addendum includes a document bearing a handwritten endorsement by the lower court, the addendum also include a typed copy of that endorsement. A lower court judge will often endorse a motion or other paper with a handwritten notation that is difficult to decipher. Requiring both a copy of the original endorsement and a typed version facilitates review in the appellate court. If the lower court clerk provides a typed notice of docket entry containing the full text of the judge's order, a copy of the notice would suffice for purposes of this rule.

Rule 16(a)(13)(D) is a new subparagraph requiring that when a brief cites to an unpublished decision, a copy of the entire decision is to be included in the addendum. The Appeals Court already requires that any party citing to a Memorandum of Decision and Order pursuant to Appeals Court Rule 1:28 decision is to include the full text of that decision in the addendum to a brief. See Chace v. Curran, 71 Mass. App. Ct. 258 (2008); Appeals Court Rule 1:28, as amended in 2008. The amendment codifies this requirement in the Rules, and expands the requirement to apply to any unpublished decision cited in a brief to either appellate court.

Rule 16(a)(13)(E) is nearly identical to prior Rule 16(a)(7), omitting "or chalk" as superfluous.

Rules 16(a)(14) and 16(a)(15) are new paragraphs which specify that the brief is to conclude with the Rule 16(k) certificate of compliance and the Rule 13(e) certificate of service. Adding these paragraphs to the "checklist" portion of Rule 16(a) highlights that the certifications are necessary parts of a brief and identify the proper location of the certifications in the brief.

Rule 16(b) was revised and separated into three paragraphs. The rule specifies, in greater detail than prior Rule 16(b), the contents of the appellee's brief. The rule requires the appellee's brief to conform to the requirements of Rule 16(a) except as provided in paragraphs (1)-(3) of the rule, and including that the statements of the issues, case, facts, and applicable standard(s) of review need not be made unless the appellee is dissatisfied with the statements of the appellant. A new provision, Rule 16(b)(3), requires the appellee to include an addendum that contains the same materials required in the appellant's addendum in Rule 16(a)(13), insofar as the items are pertinent to the appellee's arguments, even if the items were included in the appellant's addendum.

Prior Rule 16(c) was revised to specify the format of a reply brief, and expressly state that the reply brief may not raise new issues different from those raised in the principal briefs. Accord Krapf v. Krapf, 439 Mass. 97, 110 (2003) (where Supreme Judicial Court, citing prior Rules 16(a)(4) and (c), declined to consider issues raised for the first time in a reply brief). The words "or a single justice" are added to the prior requirement that "leave of the appellate court" be obtained before an appellee may file a reply brief, otherwise known as a sur-reply brief. The sentence in prior Rule 16(c) authorizing an appellee who has cross-appealed to file a reply brief responding to the appellant's argument as to the issues presented in the cross appeal was relocated to Rule 16(i), the rule addressing brief requirements in a cross appeal.

Rule 16(e) continues to require that parties support factual statements in a brief with citation to the record. This subdivision was amended to specify that the citation references shall be to both the supporting volume number(s), if applicable, and page number(s) in the appendix, transcript, exhibits, or addendum. All citations must be clear and may follow the examples found in the text of the rule. References to Rules 18(c) and 18(f) were deleted consistent with revisions to those subdivisions as described in the Reporter's Note to Rule 18.

Prior Rule 16(f) (reproduction of statutes, rules, regulations, etc., in the addendum) was deleted entirely because its substance was relocated to Rule 16(a)(13). The subdivision was kept as "reserved" instead of renumbering the subdivisions that follow because subsequent subdivisions 16(k) and 16(l) are commonly referred to by their respective numbers and maintaining the lettering will avoid confusion for filers in the appellate courts.

Rule 16(g), regarding Massachusetts citations, was amended to remove language referencing old volumes of the Massachusetts Reports, since those are not as commonly cited today. The

language was revised to state more simply that citations to Massachusetts authorities need to be to the official reporter of the decision or the official publication containing the statute or regulation, if an official report or publication exists. Language related to quotations of statutory material and citation examples were also relocated to these Reporter's Notes.

Examples of citations to Massachusetts authorities are as follows:

- Supreme Judicial Court: Commonwealth v. Dorelas, 473 Mass. 496, 502-503 (2016);
- Appeals Court: Amaral v. Seekonk Grand Prix Corp., 89 Mass. App. Ct. 1, 3-5 (2016);
- Unpublished decision: Parks vs. Petraglia, Boston Hous. Ct., No. 93-CV-00155 (Jan. 20, 1995);
- General Laws: G. L. c. 261, § 27D.

Citations to these and other authorities should be made consistent with the Supreme Judicial Court Style Manual.

Rule 16(h) was renamed "Length of Briefs in Cases Other Than Cross Appeals," to be consistent with Rule 16(i), which governs the length of briefs in cross appeals. The current contents of the Rule are deleted entirely, and replaced with a cross-reference to Rule 20(a)(2), which establishes the brief length requirements.

Rule 16(i) continues to govern briefs in cases involving cross appeals. The rule was revised and separated into four paragraphs. The first sentence of this provision was deleted and relocated to Rule 10(a)(6), docketing of a joint appeal. Rule 10(a)(6) is a more appropriate location for a provision designating the parties for purposes of a cross appeal, rather than in the rule concerning the briefs. The parties' designation for purposes of the appeal applies to all aspects of the appeal, starting at the docketing stage, and is not simply for purposes of briefing. Rule 16(i)(1) cross-references Rule 20(a)(3) regarding requirements for the length of briefs in a cross appeal. In addition, Rule 16(i)(2) updates the rule to align it with Federal language concerning cross appeals (e.g., principal brief and response brief). See Fed. R. App. P. 28.1(c). The sentence in prior Rule 16(c) authorizing an appellee that has cross-appealed to file a reply brief responding to the appellant's argument as to the issues presented in the cross appeal was relocated to Rule 16(i)(3). Finally, Rule 16(i)(4) clarifies that, except with leave of the appellate court or a single justice, an appellee who has cross-appealed may file only a single reply brief in response to the issues presented by the cross appeal regardless if multiple appellants have filed responses to the issues presented by the cross appeal.

Rule 16(j) was amended to cross-reference Rule 10(a)(5) concerning consolidated appeals. The specific reference to Rule 10(a)(5) clarifies the phrase "cases consolidated for purposes of the appeal." The rule was revised and separated into three paragraphs. The rule continues to authorize

parties to join in another party's brief in the same case. The rule was revised to clarify that reply briefs can be joined in the same manner as principal briefs. In addition, a clause requiring notice to the clerk and other parties was added. The notice informs the clerk to designate that party as having joined another party's brief and alerts the other parties that a separate brief will not be filed. Finally, a new provision, encompassed in Rule 16(j)(3), codifies existing practice that, except with leave of the appellate court or a single justice, in cases involving more than one appellant or appellee, an appellee may file only a single brief regardless of the number of appellant briefs that are filed, and an appellant may file only a single reply brief regardless of the number of appellee briefs that are filed.

Rule 16(k) continues to require a certification of compliance with the formatting requirements of these Rules. Rule 16(k) was amended to add language that the certification is to specify how compliance with the applicable length limit of Rule 20 was ascertained. This requirement will also assist the appellate court clerks' offices in verifying the brief's compliance with applicable rules. This requirement is similar to the certification required by Fed. R. App. P. 32(g)(1).

Rule 16(l) was amended to remove the phrase "with a copy to all counsel" and add the sentence, "Filing and service of any letter pursuant to this paragraph shall comply with Rule 13." Parties often neglect to adhere to the service requirements of Rule 13 when filing letters submitted pursuant to Rule 16(l). An express reference to that rule will increase compliance with these requirements and clarify that service requirements apply to such letters.

Rule 16(n) is a new subdivision that codifies existing appellate court practice regarding the filing of an amended brief. The amended document is to be submitted to the court contemporaneous with a motion seeking leave to file the amended document. An "amended" (which sometimes is titled "revised" or "corrected") brief typically contains typographical corrections or required redactions.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2005)

In order to reduce the number of non-complying briefs, Appellate Rule 16(k) was amended in 2005 to require a certification that the brief complies with all of the rules of court that govern briefs.

Counsel should be aware that a brief that does not contain the required certification may be struck by the court for non-compliance with the rule.

(2003)

[Rule 16(h)] By virtue of the 2003 amendment to Appellate Rule 16(h), a party seeking leave to file a brief with additional pages must specify the issues involved and why they require additional pages. The rule also sets forth a standard of "extraordinary reasons" for the allowance of such a motion.

(1999)

[Rule 16(h)] The 1999 amendments to Appellate Rule 16(h) were made together with the updating of Appellate Rule 20, the latter governing the form of briefs and appendices. The 1999 amendments to Appellate Rule 20 deleted references to standard typographic printing in recognition of the practice that briefs today are produced through computer word processing and no longer through a typesetting and printing process. Accordingly, the page limitation for briefs produced by "standard typographic printing" of forty pages (and fifteen pages for reply briefs) has been deleted from the rule.

The existing page limitation on principal briefs produced by computer word-processing remains fifty pages, with reply briefs twenty pages.

[Rule 16(a)] New paragraph (6), added to Appellate Rule 16(a) effective in 1999, requires that any findings (written or oral) or memorandum of decision by the trial court pertinent to an appellate issue be included in an addendum to the appellant's brief. Although findings or a memorandum of decision are already required to be included in the appendix to the brief (Mass. R. A. P. 18(a)), incorporating such matters in an addendum to the brief will enable a judge on appeal to locate quickly the trial court's rationale for its decision, especially where there is a multi-volume appendix.

The reference to oral findings is intended to cover the situation where the trial judge has dictated findings into the record that have been transcribed or otherwise recorded. These findings must now also be included in an addendum to the brief.

This additional requirement will not serve to reduce the maximum number of pages for a principal brief. The page limitations contained in Mass. R. A. P. 16(h) are inapplicable to an addendum to a brief.

(1997)

[Rule 16(a)(1)] The amendment to appellate Rule 16(a)(1), effective January 1, 1997, eliminates the provision that a table of contents and a table of cases, statutes, and other authorities be included only in briefs of twenty pages or more. All briefs must include these items.

[Rule 16(d) and (m)] The 1997 amendments to Appellate Rule 16(d) and (m) serve as a reminder to counsel to maintain confidentiality in briefs and oral argument of any information that has been impounded or designated as confidential. For example, where the name of a person is not subject to disclosure, counsel may use a generic term such as "child" or "juvenile" or may use a pseudonym or initials.

Illustrative statutes requiring confidentiality include G.L. c. 112, § 12S (petitions by minors seeking judicial determination of maturity in connection with abortion; see also Superior Court Standing Order No. 5-81, as amended, requiring that papers "shall be designated anonymously" such as with the titles "Mary Moe" or "Mary Doe"); G.L. c. 119, § 38 (names in care and protection proceedings); G.L. c. 119, § 65 (juvenile proceedings); G.L. c. 209A, § 8 (in abuse prevention proceedings, plaintiff's address and case records involving a minor); G.L. c. 209C, § 13 (papers in paternity proceedings and a party's address); and G.L. c. 210, § 5C (adoption proceedings).

Illustrative rules providing for confidentiality include Mass. R. Civ. P. 26(c) (trade secrets and other matters in connection with discovery) and Probate Court Supplemental Rule 401 (financial statements in connection with requests for support or alimony). The Uniform Rules on Impoundment Procedure also provide a mechanism to preserve confidentiality of matters contained in case papers. Illustrative cases using pseudonyms include Care and Protection of Stephen, 401 Mass. 144, 514 N.E.2d 1087 (1987); C.C. v. A.B., 406 Mass. 679, 550 N.E.2d 365 (1990); Oscar F. v. County of Worcester, 412 Mass. 38, 587 N.E.2d 208 (1992); Adoption of Carla, 416 Mass. 510, 623 N.E.2d 1118 (1993); Doe v. Superintendent of Schools of Worcester, 421 Mass. 117, 653 N.E.2d 1088 (1995); Doe v. Purity Supreme, Inc., 422 Mass. 563, 664 N.E.2d 815 (1996); and Commonwealth v. Wotan, 422 Mass. 740, 665 N.E.2d 976 (1996).

There may be instances, however, where counsel will find it necessary to include confidential information in a brief in order to allow for full appellate review of the issue. In such instances, Rule 16(m) provides that counsel must alert the clerk's office that confidential information is contained in a filing. In this way, the rule shifts the burden to counsel to alert the clerk's office to the presence of impounded material so that the latter can take appropriate steps to safeguard the material in accordance with Supreme Judicial Court Rule 1:15, Impoundment Procedure.

These amendments, together with amendments to Appellate Rule 18, serve to preserve confidentiality of material in briefs, appendices, and oral argument.

(1991)

[Rule 16(a)(7)] These amendments [to Mass. R.A.P. 16(a)(7) and 20(a), final sentence, clause (5)] require individual counsel who are affiliated with a firm to include the firm name on filed briefs. Appellate judges need to know the firm names in order to determine correctly whether it is necessary to withdraw from a case.

(1987)

[Rule 16(c)] This amendment is to clarify that reply briefs of more than twenty pages shall contain the tables and references required of other appellate briefs of that length. Such tables and references aid opposing parties and the court. This amendment corresponds, in part, to the 1986 amendment to Fed. R.A.P. 28(c).

(1982)

Appellate Rule 16(l) is the same as F.R.A.P. 28(j), which became effective in 1979. Its purpose is to allow a concise letter to inform the court in a non-argumentative manner of a "pertinent and significant" authority discovered after the filing of a brief or oral argument. The amendment does not authorize reargument in the disguise of a supplementary citation.

(1979)

[Rule 16(e)] Rule 16 was previously incorporated into criminal appellate procedure by Appeals Court Rule 1:15 (1975: 3 Mass. App. Ct. 803) and Supreme Judicial Court Rule 1:15 (1975: 366 Mass. 861). The rule is unchanged beyond amendment of subdivision (e) to reflect the fact that there may be more than one appendix in a criminal case. (Mass. R. App. P. 19[a]).

The last two sentences of subdivision (a)(4) which provide that questions or issues not argued in the brief need not be decided, but that a failure to orally argue an issue does not waive it if argued in the brief, supersede the last two sentences of former Appeals Court and Supreme Judicial Court Rules 1:13 (1972: 1 Mass. App. Ct. 889, amended 1975: 3 Mass. App. Ct. 801. 1967: 351 Mass. 738, amended, 1975: 366 Mass. 801).

(1975)

As originally promulgated, Appellate Rule 16(a)(4) made optional the use of a summary of argument. The new rule makes such a summary mandatory, if the brief contains more than 24 pages of argument (i.e., not including table of contents, table of cases, statutes, and authorities, statement of issues, and statement of the case). By explicit language, the summary must be something more than a mere recital of the argument headings.

Amended Appellate Rule 16(a)(4) makes explicit the longstanding principle that failure to discuss an issue in the brief may, at the discretion of the court, preclude reliance upon that point in oral argument. On the other hand, if the brief does include the question, failure to argue it orally does not waive the point.

Although earlier Massachusetts appellate citation form omitted the year of decision, the amendment to Appellate Rule 16(g) ensures that the year will be included in any citation.

(1973)

Appellate Rule 16 establishes the form of the briefs: table of contents; statement of the issues; statement of the case; arguments; and conclusion. Appellate Rule 16(f) also requires the reproduction of relevant statutes and the like. None of the requirements will substantially change existing practice. Appellate Rule 16(e), stating the requirements in briefs for reference to the record, likewise follows existing practice. See S.J.C. Rule 1:15; Appeals Court Rule 1:15.

RULE 17: BRIEF OF AN AMICUS CURIAE

(a) General

A brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion, (2) when solicited by the appellate court, or (3) if the Commonwealth or its officer or agency is an amicus on the brief. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(b) Timing

In all cases, an amicus curiae shall file its brief no later than 21 days before the date of oral argument for that case unless the appellate court or a single justice for cause shown shall grant leave for later filing. Any party may request leave from the appellate court or a single justice to file a response to a brief filed by an amicus curiae.

(c) Cover, Length, and Content

An amicus brief must comply with Rule 20. In addition to the requirements of Rule 20, the cover must identify the party or parties supported and state whether the brief supports affirmance or reversal or neither. An amicus brief need not comply with all the requirements of Rule 16, but must include the following:

(1) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Supreme Judicial Court Rule 1:21;
(2) a table of contents with page references, in accord with Rule 16(a)(3);
(3) a table of authorities, in accord with Rule 16(a)(4);
(4) a concise statement of the identity of the amicus curiae and its interest in the case;
(5) a declaration by all amicus curiae, other than the Commonwealth or its officer or agency, that states whether
    (A) a party or a party's counsel authored the brief in whole or in part;
    (B) a party or a party's counsel, or any other person or entity, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund the preparation or submission of the brief, and, if so, identifying each such person or entity; and
    (C) the amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal, and, if so, identifying the proceeding or transaction, its relevance to the present appeal, and the parties involved;
(6) a summary of argument, in accord with Rule 16(a)(8), if the argument is more than 20 pages in length or more than 4,500 words if produced in a proportionally spaced font;
(7) an argument, which need not include a statement of the applicable standard of review;
(8) a signature block, in accord with Rule 16(a)(12);
(9) a certificate stating that the brief complies with the requirements of this rule and Rule 20 and specifying how compliance with the length limit of Rule 20(a)(2)(C) or 20(a)(3)(E) was ascertained, by stating either (A) the name, size, and number of characters per inch of the monospaced font used and the number of non-excluded pages, or (B) 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; and
(10) a certificate of service, in accord with Rule 13(e).

A brief not complying with these rules (including a brief that does not contain a certification) may be struck from the files by the appellate court or a single justice.

(d) Filing

The same number of copies of the brief of an amicus curiae shall be filed with the clerk and served on each party as required by Rule 19(d).

(e) Oral argument

A motion of an amicus curiae to participate in the oral argument will be granted only for good cause.

Rule History

Amended October 30, 1997, effective January 1, 1998; amended October 31, 2018, effective March 1, 2019; amended February 22, 2022, effective April 1, 2022; amended effective May 7, 2024.

Reporter's Notes

(2024)

In 2024, Rule 17(c)(9) was amended to include a reference to Rule 20(a)(2)(C), which pertains to the length limit of an amicus brief filed in a case that does not involve a cross-appeal. The prior language of Rule 17(c)(9) referenced only Rule 20(a)(3)(E), which applies only to cases involving a cross appeal. This amendment corrects the omission of regular appeals from Rule 17(c)(9).

(2022)

Rule 17(a) was amended in 2022 to clarify that if the Commonwealth, or any of its officers or agencies, is one of any number of individuals or organizations on the amicus brief, the brief may be filed as of right. This includes cases where the Committee for Public Counsel Services authors or joins the amicus brief. The Committee for Public Counsel Services is an agency of the Commonwealth. G.L. c. 211D, § 1. See German v. Commonwealth, 410 Mass. 445, 447 (1991) (describing CPCS as "a statutory agency of the Commonwealth").

Rule 17(c) was amended to clarify that the declarations mandated by Rule 17(c)(5) are not required for the Commonwealth or its officer or agency, including the Committee for Public Counsel Services. Such declarations must be included for all non-Commonwealth amici, even if the brief is also joined by a Commonwealth officer or agency.

In addition, minor revisions to word choice were made for consistency and clarity. The revisions were not intended to change the substance of the rule.

(2019)

Rule 17 was divided into separate subdivisions for clarity and substantively revised as described below.

Rule 17(a) contains the first three sentences of prior Rule 17. The words “or its officer or agency” were added at the end of the second sentence to make it clear that an officer or agency of the Commonwealth may also file an amicus brief as of right. This language was adopted from a similar provision in Fed. R. App. P. 29(a)(2). The phrase “at the request of the appellate court” was amended to “when solicited by the appellate court” to clarify when an amicus brief may be filed without leave of court. In accordance with Rule 17(a)(2), an amicus curiae need not move for leave to file a brief in a case where an appellate court has issued an announcement requesting submission of amicus briefs. The words “consent or” were struck because they were redundant of “leave” of court to file an amicus brief.

Rule 17(b) revises the fourth sentence of prior Rule 17 to allow an amicus curiae to file an amicus brief no later than 21 days before the date of oral argument for that case, unless leave is granted for later filing. This is intended to establish an ascertainable date for the filing of an amicus brief on behalf of any party, provide all parties with sufficient time to prepare a response to an amicus brief, and allow the appellate court sufficient time to review any amicus brief or response. Rule 17(b) was also amended to explicitly allow any party to seek leave from the appellate court or single justice to respond to any amicus brief.

Rule 17(c) is a new subdivision that governs the cover, length, and content of an amicus brief. An amicus brief must comply with the formatting and length requirements of Rule 20.

However, an amicus brief does not need to comply with all of the content requirements applicable to a party’s brief under Rule 16. Instead, Rule 17(c) explicitly references certain provisions of Rule 16 that are applicable to an amicus brief. Text was also added to clarify an amicus brief may be struck by an appellate court or single justice if it does not comply with Rule 17(c).

Rules 17(c)(4) and (c)(5) require the amicus curiae to identify its interest in the case in an amicus brief, so that it will be readily apparent to the appellate court when considering the brief. These paragraphs were modelled on Fed. R. App. P. 29(a)(4)(D)-(E), with a few changes. As with the analogous Federal rule, these paragraphs are not intended to require the amicus to disclose mere coordination of arguments or sharing of drafts with a party. The paragraphs are, however, intended to discourage the use of amicus briefs as an instrument to reiterate arguments made by a party to the appeal.

Rule 17(c)(5)(D) requires disclosure concerning whether “the amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal,” in accord with Aspinall v. Philip Morris Co., Inc., 442 Mass. 381, 385 n.8 (2004), and Champa v. Weston Public Schools, 473 Mass. 86, 87 n.2 (2015). In determining whether another proceeding involves similar issues, the amicus and its counsel need

only consider issues that have been explicitly raised in, and that are directly relevant to, the other proceeding and the present appeal. Likewise, in determining whether another proceeding or transaction is at issue in the present appeal, the amicus and its counsel need only consider whether that proceeding or transaction has been explicitly put at issue in the appeal. Similar to Fed. R. App. P. 29(a)(4)(E), the Commonwealth and its officer or agency are exempted from the requirements in Rule 17(c)(5).

Rule 17(d) contains the last sentence of prior Rule 17 as a stand-alone subdivision. The text "counsel for each party separately represented" was replaced with "each party," consistent with the new definition of "party" in Rule 1(c). The cross-reference to Rule 19(b) was changed to Rule 19(d) to conform to changes in Rule 19.

Rule 17(e) contains the fifth sentence of prior Rule 17 as a stand-alone subdivision. The standard for allowing a motion of an amicus curiae to participate in oral argument was changed from "extraordinary reasons" to "good cause" to reflect that an amicus curiae's participation at oral argument may be desirable for a variety of reasons, even if those reasons might not be fairly described as "extraordinary."

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1997)

The 1997 amendment to Appellate Rule 17 added a new last sentence requiring that the number of copies of an amicus brief to be filed with the appellate court and served on counsel be the same as set forth in Appellate Rule 19(b).

(1979)

Rule 17 is unchanged, its provisions having been incorporated into criminal appellate procedure by former Appeals Court and Supreme Judicial Court Rules 1:15 (1975: 3 Mass. App. Ct. 803. 366 Mass. 861).

(1973)

No existing rule governs briefs of an amicus curiae. Appellate Rule 17, limiting the right to file such a brief to an amicus who has obtained leave of the full appellate court or a single justice on motion, follows existing practice. It should be noted that the Commonwealth need never obtain leave to file an amicus brief.

RULE 18: APPENDIX TO THE BRIEFS: CONTENTS, COST, FILING, AND SERVICE

(a) Duty of Appellant to Prepare and File; Content of Appendix

The appellant shall prepare and file an appendix to the briefs which shall be separately bound. The parties are cautioned that, under Rule 9, the lower court does not ordinarily transmit the entire record to the appellate court. Therefore, the appendix or appendices must include the items specified in this rule.

(1) Requirements in Civil and Criminal Cases

(A)

The appendix shall contain, in the order hereinafter provided:

(i) a cover that conforms substantially to Rules 20(a)(5)(A) and (a)(6).
(ii) a table of contents, listing the parts of the record reproduced therein, and including a detailed listing of exhibits, affidavits, and other documents associated with those parts, with references to the pages of the appendix at which each begins;
(iii) the docket entries in the lower court proceedings;
(iv) any order of impoundment or confidentiality from the lower court; and
(v) in chronological order of filing in the lower court:
  (a) any parts of the record relied upon in the brief, and in a criminal case, a copy of the complaint or indictment;
  (b) any document, or portion thereof, filed in the case relating to an issue which is to be argued on appeal;
  (c) any findings or memorandum of decision or order by the lower court pertinent to an issue on appeal, including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court;
  (d) the judgment, decree, order, or adjudication in question; and

(e) the notice(s) of appeal.

(B)

Except where they have independent relevance, memoranda of law in the lower court should not be included in the appendix.

(C)

The first volume of a multi-volume appendix shall include a complete table of contents referencing all volumes of the appendix, and each individual volume shall include a table of contents for that volume.

(D)

Parties must include in the appendix all portions of the record that are relied upon in the brief or that relate to an issue on appeal, except portions of the record subject to a motion for transmission pursuant to Rule 18 (a) (1) (G). The appellate court may decline to permit the parties to refer to portions of the record omitted from the appendix unless a motion for transmission of those portions of the record is filed in the appellate court. The fact that portions of the record are not included in the appendix or subject to a motion for transmission shall not prevent the appellate court from relying on such portions of the record.

(E)

When an appendix contains materials from more than 1 lower court case, the table of contents shall clearly indicate, by reference to the lower court docket number, the case in which each paper was filed and by whom it was filed.

(F)

Any reproduction of an exhibit in an appendix shall be of high quality to ensure a legible and accurate representation of the exhibit, including color if color is relevant. A color photograph marked or admitted as an exhibit in the lower court and included in the appendix must be reproduced in color. Lower court color-coded forms need not be reproduced in color.

(G)

If certain portions of the record cannot or should not be reproduced or transmitted, such as nonreproducible physical evidence or material the possession, transmission, or dissemination of which may constitute a violation of criminal law or a court order, the proponent shall file in the appellate court a motion for transmittal of such portions of the record at the time of the filing of the proponent's brief. A placeholder notation may be included in the appendix to reference the portions of the record subject to the motion for transmission.

(2) Additional Requirements in a Criminal Case

(A)

The appellee in a criminal case must include any part of the record relied on by the appellee not otherwise included in the appellant's appendix or contained in the transcript.

(B)

An appendix may contain relevant excerpts of the transcript, but should not duplicate the entire transcript transmitted from the lower court to the appellate court.

(b) Determination of Contents of Appendix in Civil Cases; Cost of Producing; Supplemental Appendix

(1)

The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than 14 days after receiving from the clerk of the lower court the notice of assembly of the record, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 14 days after receipt of the designation, serve upon the appellant a designation of those parts. The parties shall not engage in unnecessary designation and may refer to parts of the record not included in the appendix if permitted by the appellate court or a single justice pursuant to the provisions of Rule 18(a)(1)(D). However, this does not affect the responsibility of the parties to include materials necessary to their appeal, including exhibits, in the appendix.

(2)

Where a party designates as part of the record any matter that has been impounded or has been made confidential by statute, rule, or order, the designation shall so state.

(3)

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. In the event of a dispute as to the parts to be included or the cost advance required to include them, the

matter shall be settled by the lower court on motion and notice. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on the party.

(4)

Depending on the issues raised on appeal and the applicable standards of review, it may be necessary for the party filing the appendix to reproduce the entire transcript of the relevant lower court proceedings. Failure to reproduce the entire transcript may result in waiver of the issue. If the party does not reproduce a transcript of the entire proceedings, the party shall, preceding each portion of transcript reproduced, insert a concise statement identifying:

(A) the witness whose testimony is being reproduced;
(B) the party originally calling the witness;
(C) the party questioning the witness;
(D) the classification of the witness's examination (direct, cross, or other); and
(E) the transcript volume and page number from which the reproduced testimony is derived.

(5) Supplemental Appendix in a Civil Case

Except with leave of the appellate court or a single justice granted on motion, an appellee or cross-appellee in a civil case shall not file a supplemental appendix. Where such leave is granted, the appendix shall

(A) be filed and served with the brief pursuant to Rule 18(f) and 19, unless otherwise ordered;
(B) include only materials that are part of the record;
(C) not generally include materials already in the appellant's appendix, unless necessary for context; and
(D) be in the form prescribed by Rules 18(a)(1) and 20(a)(5) and (a)(6).

(c) Reproduction of Transcripts in Civil Cases

In a civil case, transcripts or portions thereof shall be reproduced for inclusion in the appendix consistent with Rule 18(b)(4).

(d) Reproduction of Impounded Materials

If the entire case has been impounded, the cover of the appendix shall clearly indicate that the appendix is impounded. If the entire case has not been impounded, a separate appendix volume shall be filed containing the impounded material and a copy of any lower court order(s)

impounding the material, and the cover thereof shall clearly indicate that it contains impounded material.

(e) Reproduction of electronic audio or audiovisual exhibit

At the time of filing an appendix containing a reproduction of an electronic audio or audio-visual exhibit that was part of the lower court record, the filing party shall file a written notice with the clerk, with a copy of the notice sent to all parties, so indicating the inclusion of such reproduction, and specifying the form in which it is reproduced.

(f) Filing and Service

Any appendix, including exhibits and transcripts or portions thereof in a civil case, shall be filed and served with the brief in accordance with Rule 19.

(g) Amendment of Appendix

On motion for good cause, the court may grant leave for a party to file an amended appendix volume. The motion shall describe the nature and reason for the amendment. The party shall file with the motion the amended appendix volume marked as such on the front page or cover. Except as the court otherwise orders, the filing of an amended appendix volume has no effect on any filing deadlines.

Rule History

Amended effective February 24, 1975, amended June 2, 1976, effective July 1, 1976; amended May 15, 1979, effective July 1, 1979; amended April 25, 1984, effective July 1, 1984; amended November 17, 1986, effective January 1, 1987; amended effective February 1, 1991; amended effective May 1, 1994; amended June 11, 1997, effective July 1, 1997; amended October 1, 1998, effective November 2, 1998; amended October 31, 2018, effective March 1, 2019; amended March 5, 2020, effective April 1, 2020; amended March 2, 2023, effective May 1, 2023.

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).

(2019)

Rule 18 was reorganized and substantially revised to clarify the required contents of the record appendix, as well as the procedures governing the cost, filing, and service of the record appendix. In accordance with these revisions, the title of this rule was amended to “Appendix to the Briefs: Contents, Cost, Filing, and Service.”

Rule 18(a). The entire subdivision was reorganized and separated into numbered paragraphs to improve clarity and for easy reference. The rule was also amended to require all paper appendices to be bound and filed separately from the brief. This is intended to facilitate the appellate courts’ paperless practices, which includes the scanning of paper briefs, and is consistent with the requirements for electronically filed briefs. A cautionary note was added to alert parties that the entire record ordinarily is not transmitted by the lower court to the appellate court, and therefore the appendix must include the items identified in the rule. Because the appendix is filed at the same time as a brief, the requirements related to filing and service of the appendix in prior Rule 18(a) were revised and relocated to Rule 19. See Reporter’s Notes to Rule 19.

Rule 18(a)(1) was revised to present, in a checklist format, the common items that must be included in a record appendix filed in civil and criminal cases.

Rule 18(a)(1)(A) lists the items in the order in which they must appear in an appendix.

Prior Rule 18(a) did not explicitly specify the arrangement of an appendix. As a result, the format of appendices was often inconsistent, making it difficult to locate necessary parts of the record below. This amendment is intended to streamline the rule as to the content and arrangement of an appendix, reduce confusion for litigants, help ensure appendices are complete, and facilitate review by the appellate court.

Language was added to require inclusion of the notice(s) of appeal and any written or oral findings or memorandum of decision issued by the lower court and relevant to the appeal. Notably, although Rule 16(a)(13) requires the judge's order or decision at issue to be included in a brief's addendum, it also must be included in the appendix. The duplication is required because of the different purposes served by the addendum and appendix: the addendum is for the convenient reference of the judges and parties, and the appendix is a compilation of all relevant lower court documents and is used for record reference purposes.

In Rule 18(a)(1)(A)(iii), the word "relevant" that qualified "docket entries" in prior Rule 18(a) was removed. The inclusion of the entire trial court docket provides a better context for review of the issues on appeal. A printout or copy of the lower court docket is acceptable.

Rule 18(a)(1)(A)(v)(d). The amendment requiring the inclusion of the "judgment, decree, order, or adjudication in question" does not necessarily mean verdict slips must be included in the appendix, but might if the verdict slips are relevant to an issue on appeal.

Rule 18(a)(1)(B) continues the requirement from prior Rule 18(a) that memoranda of law filed in the lower court should not be included in the appendix unless they have independent relevance. As stated in the 1986 Reporter's Notes to Rule 18:

> the inclusion of memoranda of law can make an appendix bulky and less useful to the appellate court, and also increase litigation costs. 'There are occasions when such trial court memoranda have independent relevance in the appellate litigation. For instance, there may be a dispute as to whether a particular point was raised or whether a concession was made in the ... [lower court]. In such circumstances, it is appropriate to include pertinent sections of such memoranda in the appendix.'

Rule 18(a)(1)(C) is a new subparagraph intended to facilitate the reading of appendices in electronic form, consistent with the appellate court's paperless practices, and particularly in cases in which multiple appendix volumes are filed. The first volume of the appendix is to include

a complete table of contents referencing all volumes of the appendix, and each individual volume must include a table of contents for that volume. To facilitate review by the court, the table of contents should identify each separate document included in each respective volume and the page in the volume where the document begins. Further, when a principal document contains multiple documents attached as exhibits, such as a motion for summary judgment package or administrative agency record, the table of contents should list the motion and each individual document filed with the motion, and the page of the appendix where each document is located.

Rule 18(a)(1)(D) relocates and clarifies the provision included in prior Rule 18(a) regarding an appellant's obligation to include all relevant portions of the record in the appendix. However, although an appellant must provide the reviewing court with all relevant portions of the record, Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 811 (1992), an appellate court is entitled, in its discretion, to rely on parts of the record even if not included in the record appendix. Commonwealth v. Morse, 50 Mass. App. Ct. 582, 586 n.3 (2000). As stated in the 1994 Reporter's Notes to an amendment to Rule 18(b):

Rules 18(b) and 18(f), which under some circumstances permit the parties to rely on parts of the record that have not been included in the appendix, specifically refer to leave granted prior to argument or a motion in advance granted by the appellate court or a single justice. The new language is in keeping with the normal expectation of appellate judges that the parties will provide appellate courts with an appendix which includes the materials upon which they rely. See Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 810-812 (1992).

Rule 18(a)(1)(E) relocates language from prior Rule 18(d) regarding an appendix that contains materials from more than one lower court case. Similar to the prior rule, the appendix must indicate the case to which each document belongs and by whom it was filed.

Rule 18(a)(1)(F) is a new subparagraph that requires any exhibit reproduced in the appendix to be of high quality to ensure it is a legible and accurate reproduction, including color, if the color is relevant. The rule requires that a color photograph marked or admitted as an exhibit in the lower court and included in the appendix be reproduced in color. The rule specifically excludes court forms which are color coded and which may be submitted in black and white instead of color, but must be legible. Frequently, parties file a record appendix containing exhibits that were copied, scanned, or reproduced in such poor quality that it is difficult or impossible for the appellate court to read or view the exhibit. With the advent of electronic filing in the appellate courts and the use of electronic devices to view appendices, this amendment is necessary to ensure that the highest possible quality images are provided.

Language in prior Rule 18(a) that referred to a process for deferral of a record appendix pursuant to prior Rule 18(c) was deleted because Rule 18(c) was deleted in the amended rules, as described below.

Rule 18(a)(2) is a new paragraph titled "Additional Requirements in a Criminal Case," which specifies items in addition to those required in Rule 18(a)(1) that must be included in the appendix in criminal cases only. Rule 18(a)(2)(A) is a new subparagraph which imposes an obligation on the appellee in a criminal case to include any part of the record on which the appellee relies that is not otherwise included in the appellant's appendix or contained in the transcript. This requirement addresses situations where necessary documents are omitted from both parties' appendices even though they are discussed in the appellee's brief. As in prior Rule 18(a), the appellee in a criminal case may file a supplemental appendix containing relevant portions of the lower court record without filing a motion, when the supplemental appendix is filed at the same time as the appellee's brief. Rule 18(a)(2)(B) provides for optional inclusion in the appendix of excerpts of the transcript in criminal cases. In criminal cases, either party may, but are not required to, reproduce relevant portions of the transcript in the appendix but should not duplicate the entire transcript as it is already available to the appellate court.

Prior Rule 18(b) was amended to create three numbered paragraphs. The timeframe regarding the parties' agreement as to the contents of an appendix in a civil case is included in Rule 18(b)(1). Rule 18(b)(1) was amended to be triggered by the appellant "receiving from the clerk of the lower court the notice of assembly of the record." This phrase replaces the prior phrase "the date on which the clerk notifies the parties that the record has been assembled" in the second sentence. The change is consistent with amendments to Rule 10(a). The reference to prior Rule 18(f) was struck, as that subdivision was deleted from the amended rule for the reasons stated below.

Rule 18(b)(4) outlines the requirements, relocated from prior Rule 18(d), applicable when a party in a civil case reproduces only portions of a transcript. A cautionary note is added to this paragraph to alert the parties that it may be necessary to reproduce the entire transcript of the relevant court proceedings; otherwise waiver of one or more issues may result. It is essential that parties provide the relevant portions of the transcripts of proceedings in the lower court. Parties often relied on the prior rule to submit incomplete transcripts to support their appellate arguments, and subsequently the appellate court reviewing the appeal determined that additional portions of the transcript, or even the entire transcript, were necessary for proper review of the issues on appeal. This language makes clear that a partial transcript may not be appropriate for every civil case.

Rule 18(b)(5) is a new paragraph which addresses the filing of a supplemental appendix in civil cases. The requirements for filing a supplemental appendix are included in separate subparagraphs for ease of reference. Appellees and cross-appellees in civil cases often submit

supplemental appendices without realizing that leave of court is required. This rule clarifies the process for filing a supplemental appendix in a civil appeal and incorporates current practice requiring leave of court for such filing. This rule promotes judicial efficiency by reducing delays associated with the submission of a supplemental appendix without leave of court and ensures that the docket will note the filing of a supplemental appendix. In addition, requiring leave of court in a civil matter encourages parties to abide by the provisions of Rule 18(b) regarding designation and agreement as to the contents of the record appendix at the outset of the case.

Prior Rule 18(c) was deleted in its entirety. The subdivision permitted the appellant to elect, with the court's permission, to defer preparation of the appendix until after the briefs had been filed. In practice, requests to defer appendix preparation pursuant to Rule 18(c) were rarely filed, and, if filed, were rarely allowed. Deferral of preparation of the appendix resulted in delay in the appellate process and unnecessary duplication of the parties' efforts. In the future rare circumstance where deferral of appendix preparation may be appropriate, Rule 2, which allows for suspension of the rules by the appellate court or a single justice, and Rule 15(c), which governs motions generally, would suffice to afford the parties an opportunity to request leave to defer the appendix.

The filing and service requirements related to exhibits and transcripts in prior Rule 18(e), were relocated, with slight revisions, to Rule 19(d)(2). This amendment was made because exhibits and transcripts are filed and served contemporaneous with a brief. See Reporter's Notes to Rule 19(d)(2). The remainder of prior Rule 18(e) was designated in the amended rules as Rule 18(c), and is revised to clarify that in civil cases parties are authorized to reproduce exhibits and transcripts or portions thereof for inclusion in the appendix.

Prior Rule 18(f) was deleted in its entirety. Parties sometimes requested to proceed on the original record for purposes of expediency or instead of incurring the expense of preparation of an appendix. Such motions were rarely, if ever, allowed because the appendix materials and organization are essential to the appellate courts' review of the issues on appeal, and multiple copies of the pertinent record materials are required because multiple justices are involved in reviewing the record. In the rare circumstance where allowance of such a motion may be appropriate, Rule 2, which allows for suspension of the rules by the appellate court or a single justice, and Rule 15(c), which governs motions generally, would suffice to enable proceeding in this alternative manner.

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.

Rule 18(e) is a new subdivision addressing the reproduction of electronic audio or audiovisual exhibits. This subdivision requires parties who include reproductions of these exhibits in their appendix to notify the clerk, with a copy of this notice sent to all parties, indicating the inclusion of such reproduction and specifying the form in which the material is reproduced. Parties sometimes file a reproduction of an electronic audio or audiovisual exhibit but do not alert the appellate court clerk that it has been included in the appendix. The requirement of filing a written notice with the clerk's office ensures that the appellate court is aware that the electronic audio or audiovisual exhibit has been included and can be properly processed and stored.

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.

Rule 18(g) is a new subdivision that codifies existing appellate court practice regarding the filing of an amended appendix volume. The amended document (which sometimes is titled "revised" or "corrected") is to be submitted to the court contemporaneous with a motion seeking leave to file the amended document.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1998)

[Rule 18(e)] This amendment is intended to further decrease the cost of appeals and further reduce the quantity of documents which must be handled and stored by the appellate courts. In the Appeals Court, the number of transcript copies in civil cases (if separately bound) has been reduced to two, which is the same requirement as in criminal cases (see Mass. R.A.P. 9(d)). If a case is transferred to the Supreme Judicial Court after the filing of a reduced number of copies in the Appeals Court, three additional copies of the transcript must be filed in the Supreme Judicial Court.

(1997)

[Rule 18(a), (b) and (g)] The 1997 amendment to Appellate Rule 18(a) requires that where any matter has been impounded or made confidential in the lower court, a copy of the lower court order of impoundment, if any, be included in the appendix. The amendment to Appellate Rule

18(b) requires that where such matter is to be included in the record, the fact that the matter has been impounded or made confidential be indicated in the designation of the record.

The amendment to Appellate Rule 18(g) places the burden on counsel to inform the appellate clerk's office that confidential information is contained in an appendix and to prepare a separate appendix volume in instances where less than the entire case has been impounded. The purpose of this amendment, as is the purpose of the simultaneous amendments to Appellate Rules 16(d) and (m), is to facilitate the work of the clerk's office in maintaining the confidentiality of information filed in the appellate court. See Reporter's Notes to Appellate Rules 16(d) and (m).

(1994)

[Rule 18(b)] The prior language in Mass. R.A.P. 18(b) stated that "[i]n designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation." Since the parties have the obligation in Rule 18(a) and (b) to designate portions of the record upon which they will rely, and in civil cases must include relevant portions of the transcript, it was unclear what it meant "to have regard for the fact that the entire record is always available to the court." This phrase was particularly ambiguous because the parties in civil cases have no right to rely upon portions of the transcript that are not designated. Rules 18(b) and 18(f), which under some circumstances permit the parties to rely on parts of the record that have not been included in the appendix, specifically refer to leave granted prior to argument or a motion in advance granted by the appellate court or a single justice. The new language is in keeping with the normal expectation of appellate judges that the parties will provide appellate courts with an appendix which includes the materials upon which they rely. See Shawmut Community Bank, N.A. v. Zagami, 411 Mass. 807, 810-812 (1992).

(1991)

[Rule 18(a)] This amendment reduces the number of copies of the appendix required to be filed in the Appeals Court from fifteen to the numbers of copies of the brief required under Mass. R.A.P. 19(b). For example, unless an exception applies, a party is required to file seven copies of both the briefs and the appendix in the Appeals Court and fifteen copies in the Supreme Judicial Court. The reasons for the reduction are explained in the Reporter's Notes to Amended Rule 19(b).

(1987)

[Rule 18(a)] This amendment corresponds to a 1986 amendment to Fed. R.A.P. 30(a). As the Committee Note to that amendment suggests, the inclusion of memoranda of law can make an appendix bulky and less useful to the appellate court, and also increase litigation costs. "There are occasions when such trial court memoranda have independent relevance in the appellate

litigation. For instance, there may be a dispute as to whether a particular point was raised or whether a concession was made in the . . . [lower court]. In such circumstances, it is appropriate to include pertinent sections of such memoranda in the appendix."

(1984)

Under previous Mass. R. A. P. 18(e) a party on appeal could put "exhibits designated for inclusion in the appendix" in "a separate volume, or volumes" and then file only "five copies," plus serve one copy "on counsel for each party separately represented." This reduced the number of copies of exhibits otherwise required under Mass. R. A. P. 18(a). The present amendment to Mass. R. A. P. 18(e) adds "transcripts or portions thereof in civil cases" to "exhibits," to further decrease the cost of appeals and reduce the number of documents which must be handled and stored by appellate courts.

The reference to Mass. R. A. P. 18(e), which has now been added to Rule 18(a), is to remind counsel to check Rule 18(e) in order to consider whether they wish to reduce the required copies of exhibits and "transcripts or portions thereof in civil cases" from fifteen, plus two for "counsel for each party separately represented," to five, plus one copy for such counsel. This change also makes clear that the "five copies" option in Rule 18(e) is instead of, and not in addition to, the "fifteen copies" otherwise required by the provisions of Rule 18(a).

These amendments do not alter the rules in criminal cases, which obligate the clerk of the lower court to transmit to the appellate court the "original and one copy of the transcript and a list of all the exhibits" and provide that ". . . the appendix need not contain relevant portions of the transcript . . ." (Mass. R. A. P. 9(d) and 18(a)).

(1979)

[Rule 18(a), (b), and (c)] A major change in criminal appellate procedure is worked by the application of Rule 18, as amended, to criminal cases. Under prior practice, after the record was assembled by the clerk, he would prepare a "summary of the record" which included a copy of the indictment or complaint and copies of pleadings and motions designated by the parties (former G.L. c. 278, § 33C [St.1974, c. 458, § 1]). This summary, in the required number of copies (former G.L. c. 278, § 33 [St.1978, c. 478, § 308]; Appeals Court and Supreme Judicial Court Rules 1:01 [1975: 3 Mass. App. Ct. 801-02. 366 Mass. 858, amended March 2, 1978]) was reproduced at the expense of the Commonwealth. The summary, together with two copies of the transcript and the assignment of errors (former G.L. c. 278, § 33D [St.1974, c. 458, § 2]), constituted the record on appeal (former G.L. c. 278, § 33E [St.1974, c. 457]). Under Rule 8(a), as amended, the record on appeal now consists of the original papers and exhibits on file, the transcript and a copy of the docket entries. The entire record is not transmitted to the appellate court except upon that court's order (Rule 9[a], [d]). The place of the summary of the record is taken by an appendix to the briefs,

the contents of which are described in Rule 18(a). Responsibility for preparation of the appendix (properly "record appendix") rests with the appellant. If the appellee wishes to direct the particular attention of the court to parts of the record not contained in the appendix prepared by the appellant, he may prepare and file with his brief a supplemental appendix.

As in civil cases, the record appendix "is that distillation of the decision-essential portions of the record [on appeal]." Mass. R. App. P. 8, Reporter's Notes [1974]).

Subdivision (a) is changed by reducing from twenty-five to fifteen the number of copies of the appendix required to be filed, and, as amended, applies to both civil and criminal cases.

Subdivisions (b) and (c) are limited in application to civil cases.

Subdivision (d) restates in part the requirements of former Appeals Court and Supreme Judicial Court Rules 1:01, supra, relative to the contents of the record appendix and designation of the papers in a record.

Subdivisions (e) and (f) are unchanged.

(1976)

[Rule 18(d)] The amendment, which carries forward the changes effected in February, 1975, seeks to ensure legibility of the appendix. It explicitly requires that the pages be consecutively numbered, and that, whenever the appendix contains less than the entire transcript, any excerpt will bear adequate identifying matter.

(1975)

The amendment to Appellate Rule 18(d) ensures that in a multiparty appeal, each paper appearing in the reproduced appendix bears sufficient identification to permit the reader easily to understand the document's particular genesis and significance.

(1973)

Appellate Rule 18 indicates the required contents of the appendix, preparation of which is appellant's responsibility; the appendix must be filed with appellant's brief. Appellate Rule 18(b) encourages the parties to agree as to the contents of the joint appendix. Appellate Rule 18(c) permits the parties, at the election of the appellant, with leave of the appellate court or a single justice, to defer preparation of the appendix until after the briefs have been filed; it sets out detailed regulations for appropriate pagination of the deferred appendix and consequent references in the briefs. It should be emphasized that transcript pages included in the appendix may be reproduced by Xerography or a similar process; they need not be retyped. See Appellate

Rule 20(a). The procedures set out in Appellate Rule 18, although necessarily somewhat different from existing practice, should not cause any serious practitional dislocation. See S.J.C. Rule 1:22.

RULE 19: FILING AND SERVING OF BRIEFS, APPENDICES, AND CERTAIN MOTIONS

(a) Time for Serving and Filing Briefs and Appendices in All Cases Except Cross Appeals

Except as provided in Rule 19(c) (first degree murder appeals), Rule 11(g)(4) (direct appellate review), and Rule 27.1(f) (further appellate review), the following briefs and appendices shall be due as stated below:

(1) Appellant Brief and Appendix

The appellant shall serve and file a brief and appendix within 40 days after the date on which the appeal is docketed in the appellate court.

(2) Appellee Brief

The appellee shall serve and file a brief within 30 days after service of the brief of the appellant (or, in the case of multiple appellants, service of the last appellant brief).

(3) Reply Brief

Except by leave of court, any reply brief must be served and filed by the earlier of

(A) 14 days after service of the brief of the appellee (or, in the case of multiple appellees, service of the last appellee brief), or
(B) 7 days before argument.

(b) Time for Serving and Filing Briefs and Appendices in Cases Involving Cross Appeals

Except as provided in Rule 19(c) (first degree murder appeals), Rule 11(g) (direct appellate review), and Rule 27.1(f) (further appellate review), the following briefs and appendices shall be due when stated:

(1) Appellant's Principal Brief and Appendix

The appellant/cross-appellee shall serve and file a brief and appendix within 40 days after the date on which the appeal is docketed in the appellate court.

(2) Appellee's Principal and Response Brief and Appendix

The appellee/cross-appellant shall serve and file a brief and appendix within 30 days after service of the brief and appendix of the appellant (or, in the case of multiple appellants, service of the last appellant brief).

(3) Appellant's Response and Reply Brief

The appellant/cross-appellee reply brief must be served and filed within 30 days after service of the brief of the appellee/cross-appellant.

(4) Appellee's Reply Brief

Except by leave of court, any reply brief must be served and filed by the appellee/cross-appellant by the earlier of (A) 14 days after service of the brief of the appellant/cross-appellee (or, in the case of multiple appellant/cross-appellees, service of the last appellant/cross-appellee brief), or (B) 7 days before argument.

(c) Time for Serving and Filing Briefs, Appendices, and Motions for New Trial in First Degree Murder Appeals

(1)

In the case of a direct appeal by an appellant who has been convicted of first degree murder, the appellant shall within 120 days after the date on which the appeal is docketed in the Supreme Judicial Court: (A) serve and file the appellant's brief and appendix; (B) serve and file a motion for a new trial; or (C) for good cause shown, seek a further enlargement of time for filing a brief and appendix or a motion for a new trial. The Commonwealth shall serve and file its brief within 90 days after service of the brief of the appellant. The appellant may serve and file a reply brief within the 30 days after service of the brief of the Commonwealth.

(2)

If during the pendency of the direct appeal a motion for a new trial is remanded to the Superior Court, the direct appeal of the conviction will ordinarily be stayed until the motion is decided. The matter shall be heard and determined expeditiously in the Superior Court. The appellant shall file

with the Clerk of the Supreme Judicial Court for the Commonwealth status reports as directed by the Court. An appeal by the defendant from the denial of a motion for a new trial shall be consolidated with the direct appeal. An appeal by the Commonwealth or by the defendant from the determination of a motion for a new trial shall have the same docket number as the direct appeal. The Clerk of the Supreme Judicial Court for the Commonwealth shall establish a briefing schedule.

(d) Number of Copies to Be Filed and Served

(1) Briefs and Appendices

(A) Appeals Court

Except as provided in M.A.C. Rule 13.0, concerning electronic filing, on appeal to the Appeals Court, either the original or 1 copy of each brief and appendix shall be filed with the clerk, unless the court by order in a particular case shall direct a different number, and 1 copy shall be served on counsel for each party separately represented, 1 copy of each shall be served on counsel for all jointly represented parties, and 2 copies of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or by order direct the filing or service of a different number.

(B) Supreme Judicial Court

(i)

On appeal to the Supreme Judicial Court, 7 copies of each brief and appendix shall be filed with the clerk, unless the court by order in a particular case shall direct a different number, and 2 copies shall be served on counsel for each party separately represented, 2 copies of each shall be served on counsel for all jointly represented parties, and 2 copies of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or by order direct the filing or service of a different number.

(ii) Appeals Transferred to the Supreme Judicial Court from the Appeals Court

In any appeal transferred to the full Supreme Judicial Court, in which briefs and appendices have already been filed in the Appeals Court, 7 copies of each brief and appendix shall be promptly filed with the clerk of the Supreme Judicial Court, unless the court by order in a particular case shall direct a different number.

(2) Exhibits and Transcripts in Civil Cases

Exhibits and transcripts or portions thereof in civil cases, designated for inclusion in the appendix, may be contained in separate volumes, suitably indexed.

(A) Appeals Court

Except as provided in M.A.C. Rule 13.0, concerning electronic filing, on appeal to the Appeals Court, 1 copy of the exhibit volume or volumes, and 1 copy of the transcript volume or volumes shall be filed with the brief and appendix and 1 copy of each shall be served on counsel for each party separately represented, 1 copy of each shall be served on counsel for all jointly represented parties, and 1 copy of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or order direct the filing or service of a different number.

(B) Supreme Judicial Court

(i)

On appeal to the Supreme Judicial Court, and on further appellate review, 2 copies of the exhibit volume or volumes and 2 copies of the transcript volume or volumes shall be filed with the brief and appendix and 1 copy of each shall be served on counsel for each party separately represented, 1 copy of each shall be served on counsel for all jointly represented parties, and 1 copy of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or by order direct the filing or service of a different number.

(ii) Appeals Transferred to the Supreme Judicial Court from the Appeals Court

In any appeal transferred to the full Supreme Judicial Court, in which copies of the exhibits and transcripts have already been filed in the Appeals Court pursuant to this rule, 2 copies of the transcript volume or volumes shall be promptly filed with the clerk of the Supreme Judicial Court, unless the court by order in a particular case shall direct a different number.

(e) Consequence of Failure to File Briefs and Appendices

If an appellant fails to file a brief and appendix, other than a reply brief, within the time provided by this rule, or within the time as extended, the appellate court may, upon motion or sua sponte, dismiss the appeal. Any appellee who elects not to file a principal brief shall timely notify the appellate court and all parties that no brief will be filed. If an appellee fails to file a brief within the time provided by this rule, or within the time as extended, the appellate court may, upon motion or

sua sponte, deem the case ready for consideration by the appellate court. An appellee who fails to file a timely brief will not be heard at oral argument except by permission of the appellate court.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended effective February 1, 1991; amended effective July 1, 1991; amended October 30, 1997, effective January 1, 1998; amended July 28, 1999, effective October 1, 1999; amended February 26, 2004, effective April 1, 2004; amended October 31, 2018, effective March 1, 2019; amended July 7, 2021, effective September 1, 2021; amended April 25, 2022, effective May 1, 2022.

Reporter's Notes

(2022)

Rule 19 (d) (1) (A) and Rule 19 (d) (2) (A) were amended to reduce the required number of paper documents filed with the Appeals Court. These amendments reflect the Appeals Court's practice of scanning paper documents and retaining them electronically in the court's case management system and distributing them electronically to the Justices and court personnel.

Attorneys are cautioned that M.A.C. Rule 13.0 requires most attorney-filed documents be filed electronically with no paper version to be filed with the Appeals Court. Where the rules permit a particular filing to be submitted to the Appeals Court in paper form (such as briefs, appendices, and, in civil cases, any exhibit volume or transcript volume), only a single copy is required. As amended, Rule 19 (d) (1) (A) allows the filed version of the brief to be either the original (i.e., with an original signature) or a copy, not both.

Rule 19 (d) (1) (A) was also amended to reduce from 2 to 1 the number of copies of each brief and appendix to be served on any counsel of record in connection with an appeal in the Appeals Court. This amendment recognizes that most attorneys today communicate electronically with their clients and counsel, eliminating the need for a second copy. The requirement that 2 copies of each brief and appendix be served on a self-represented party remains.

No changes were made to Rule 19(d)(1)(B) and Rule 19(d)(2)(B), which concern appeals in the Supreme Judicial Court.

(2021)

Technical amendments were made to Rule 19(d)(1)(A) and 19(d)(2)(A) to reflect amendments made to the Appeals Court Rules in 2020. The reference in each to "Appeals Court Standing Order

Concerning Electronic Filing" was deleted and replaced with "M.A.C. Rule 13.0, concerning electronic filing."

(2019)

The title of Rule 19 was amended to add "Certain" before "Motions" to clarify this rule only governs certain motions, unlike Rule 15 which governs motions generally. Reference to "Appendices" was also added to the title because the rule, as amended, governs the requirements for the filing and service of appendices. A provision in prior Rule 18(a) governed the filing and service of appendices. Since amended Rule 19 clarifies that briefs and appendices are filed contemporaneously, relocating these requirements to Rule 19 streamlined the filing and service requirements for these documents. This amendment is also consistent with the deletion of the provision contained in prior Rule 18(c) which allowed parties to defer the filing of an appendix in a civil case. See Reporter's Notes to Rule 18.

Rules 19(a) and (b). Prior Rule 19(a)'s provision for the timely filing and service of briefs was separated into two subdivisions: Rule 19(a) concerns cases where there is no cross appeal, and Rule 19(b) concerns cases involving cross appeals. Expressly excluded from both subdivisions are briefs filed pursuant to Rules 19(c) (first degree murder appeals), 11(g) (direct appellate review), and 27.1(f) (further appellate review).

Rule 19(a)(1) clarifies that the appellant's brief and appendix are both due at the same time.

Rule 19(a)(2), governing the due date for an appellee's brief, was revised to clarify that in an appeal involving multiple appellants, and in which more than one appellant brief is being filed, the appellee's brief is not due until 30 days after service of the last appellants' brief.

Rule 19(a)(3) amends the time period a party is allowed to file a reply brief. A reply brief must be filed by the earlier of either 14 days after service of the appellee's brief or 7 days prior to a scheduled argument before the appellate court.

Rule 19(b) is a new subdivision that concerns the time for filing and serving briefs and appendices in cases involving cross appeals, and is modelled on Fed. R. App. P. 28.1(f). It is intended to clarify the time frame for filing briefs, and the types of briefs that can be filed, in such cases.

Rule 19(c), encompassing prior Rule 19(d), was revised to reflect that G.L. c. 278, § 33E, was amended in 2012 to include certain habitual offender convictions. The revision clarifies that the extraordinary provisions of Rule 19(c) apply only to first degree murder appeals. No determination has been made that these provisions will apply to those habitual offender appeals that are now covered by G.L. c. 278, § 33E. References to Rule 19(c) were updated in the remainder of the rule to reflect the new title.

Rule 19(d), prior Rule 19(b), is a substantively revised subdivision that provides, in a single rule, the varying requirements for the filing and service of a brief and the brief-related documents that must be filed with the brief in each of the appellate courts. Under the prior rules, these requirements were located in several different rules (prior Rules 18(a), 18(e), and 19(b)) and often caused confusion for the parties.

Rules 19(d)(1)(A) and 19(d)(2)(A) reduce the number of copies of documents that must be filed in the Appeals Court. Rule 19(d)(1)(A) reduces the number of copies of each brief and appendix to be filed in the Appeals Court from 7 to 4. Rule 19(d)(2)(A), which applies to civil cases, was relocated to Rule 19 from prior Rule 18(e) to consolidate and streamline the filing and service requirements previously contained in Rules 18 and 19. See Reporter's Notes to Rule 18. The amendments reduce the number of copies of each exhibit and transcript volume that was required in prior Rule 18(e). The required number of copies of each exhibit volume was reduced from 5 to 2, and copies of each transcript volume from 2 to 1. Due to advances in the Appeals Court's paperless practices, fewer copies of each document are now required to properly process and review filings. In both Rules 19(d)(1)(A) and 19(d)(2)(A), reference was added to the Appeals Court Standing Order Concerning Electronic Filing, which supplements the Rules of Appellate Procedure to the extent that it requires certain documents to be electronically filed, and, if electronically filed, provides no paper copies are required.

Rules 19(d)(1)(B) and 19(d)(2)(B) similarly reduce the number of copies of documents that must be filed in the Supreme Judicial Court. The Supreme Judicial Court now requires 7 copies of each brief and appendix volume. In civil cases, 2 copies of each exhibit volume and transcript volume are required. Under the prior rules, fewer copies of these documents were required to be filed in the Supreme Judicial Court if a case was transferred from the Appeals Court after briefs, appendices, exhibits, or transcripts were filed in the Appeals Court. This distinction has been eliminated. Under the new rules the number of required copies is the same regardless of how or when an appeal enters in the Supreme Judicial Court. Rules 19(d)(1)(B)(ii) and 19(d)(2)(B)(ii) retain the prior requirement that where an appeal is transferred to the Supreme Judicial Court after briefs, appendices, exhibits, or transcripts were filed in the Appeals Court, the additional required copies must be "promptly filed" with the clerk of the Supreme Judicial Court.

Rules 19(d)(1)(A), 19(d)(1)(B)(i), 19(d)(2)(A), and 19(d)(2)(B)(i) add text to clarify the service requirements depending on the representation status of the parties. In cases involving jointly represented parties, 2 copies of the brief and appendix must be served and 1 copy of each exhibit volume and transcript volume must be served on counsel for all jointly represented parties. In cases involving self-represented parties, 2 copies of the brief and appendix and 1 copy of each exhibit volume and transcript volume must be served on each self-represented party.

These amendments are intended to reduce confusion parties often have regarding service requirements in cases involving jointly represented parties or self-represented parties.

Rule 19(e), prior Rule 19(c), was revised to clarify that an appellate court may, upon motion or sua sponte, dismiss an appeal if an appellant fails to file a brief and appendix (other than a reply brief). In addition, a provision was added requiring any appellee who will not be filing a brief to timely notify the court. Timely notification is considered to be within the time period allotted for the filing of the brief. This notification is essential to the appellate court's processing of an appeal. Otherwise, the court awaits the filing of the brief, which can result in a significant delay in the timing of the court's consideration and disposition of the appeal. An additional provision was added to provide that, if an appellee fails to file a brief within the time provided by the rule, or any enlargement granted by the court, the appellate court may, upon motion or sua sponte, deem the case ready for consideration by the court. This provision is consistent with the appellate courts' practices.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2004)

[Rule 19(a)] The first sentence of Appellate Rule 19(a) has been amended to be consistent with the simultaneous amendment to Appellate Rule 27.1(f). As amended in 2004, Appellate Rule 27.1(f) provides that upon further appellate review in the Supreme Judicial Court, a party may rely on the brief filed in the Appeals Court or may request permission to file a new brief in lieu of the Appeals Court brief.

(1999)

[Rule 19(d)] The 1999 amendments added new Appellate Rule 19(d) to deal with direct appeals to the Supreme Judicial Court from first-degree murder convictions pursuant to G.L. c. 278, § 33E. The changes to Appellate Rule 19 were based on recommendations made by the Ad Hoc Supreme Judicial Court Committee on Appeals in Cases of Murder in the First Degree, a committee consisting of defense attorneys and prosecutors who handle first degree murder appeals. The major purpose of the amendments was to establish realistic time periods for the briefing of such appeals.

Paragraph (1) of Appellate Rule 19(d) substantially lengthens the time period for the service and filing of briefs that is provided for cases other than first-degree murder appeals in Appellate Rule 19(a). The time period for the appellant's brief has been increased from 40 days to 120 days; the time period for the Commonwealth's brief has been increased from 30 days to 90 days (and any reply brief by the appellant to be served and filed within 30 days). A defendant must serve and file a motion for new trial within 120 days of docketing the appeal in the Supreme Judicial Court.

Paragraph (2) of Appellate Rule 19(d) provides for a stay of the direct appeal in the event the Supreme Judicial Court remands to the Superior Court a motion for new trial. In such event, the appellant must file status reports with the Clerk of the Supreme Judicial Court for the Commonwealth every 30 days. An appeal by the defendant from the Superior Court judge's denial of a motion for new trial is to be consolidated with the direct appeal under the same docket number. In such a case, the Clerk of the Supreme Judicial Court will establish the schedule for briefing.

(1997)

[Rule 19(b), effective January 1, 1998] The 1997 amendments to Appellate Rule 19(b) were prompted by the need for additional copies of filings to accommodate the practice in which all seven Justices of the Supreme Judicial Court sit on many cases.

Appellate Rule 19(b)(2), dealing with appeals to the Supreme Judicial Court, was amended to increase to seventeen the number of copies of each brief to be filed with the clerk of the Supreme Judicial Court, unless otherwise ordered. The amendment also clarified that an original is to be filed together with the seventeen copies.

Appellate Rule 19(b)(3), dealing with appeals transferred to the Supreme Judicial Court from the Appeals Court in cases where briefs had already been filed in the Appeals Court, was amended to increase to eleven the number of additional copies to be filed with the clerk of the Supreme Judicial Court, unless otherwise ordered.

(1991)

[Rule 19(b)] Experience has demonstrated that seven copies of briefs are needed by the Appeals Court and fifteen by the Supreme Judicial Court. This amendment, reducing the number of copies from fifteen in the Appeals Court, should save money for the parties and the Commonwealth, as well as storage space for the court. When a case is transferred from the Appeals Court to the Supreme Judicial Court, in which briefs have already been filed, the clerk of the Appeals Court must transmit the seven copies of the briefs already filed (Mass. R.A.P. 11(f)), and the parties must promptly deliver an additional eight copies to the clerk of the Supreme Judicial Court (Mass. R.A.P. 19(b)(3)).

[Rule 19(a)] The amendment to Mass. R.A.P. 19(a), by adding "[e]xcept as provided in Rule 11(g)(4) concerning the filing of briefs on direct appellate review," alerts the appellant to the different time period for the filing of briefs in direct appellate review cases.

(1979)

[Rule 19(b)] There is no change in the substance of subdivision (a), but applying the rule to criminal appeals does enlarge the times for filing of the appellant's brief found in former Appeals Court and Supreme Judicial Court Rules 1:16 (1975: 3 Mass. App. Ct. 804. 366 Mass. 861-62) from twenty-eight to forty days after docketing (Mass. R. App. P. 10[b]). Further, under the former court rules, the appellee's brief was required to be filed within forty-nine days after entry of the case, while up to seventy days after docketing is allowed by this rule (within thirty days after service of appellant's brief). Thus, in the usual appeal, the defendant's brief is due forty days after docketing and the Commonwealth's brief thirty days thereafter. The abolishing of assignments of error (former G.L. c. 278, § 33D [St.1974, c. 458, § 2]) eliminate one step in prior appellate procedure which generated a great deal of delay. Section 33D of chapter 278 required that assignments were to be filed within thirty days after receipt of notice of the completion of the summary of the record (G.L. c. 278, § 33C [St.1974, c. 458, § 1]), but that time could be extended by a justice of an appellate or lower court. Much of the delay was attributable to the fact that assignments could not be prepared until the trial transcript had been received and reviewed for error.

Appeals Court and Supreme Judicial Court Rules 1:16 permitted either party to file a reply brief; under Rule 19, only the appellant may do so. Twenty-five copies of each were required to be filed by both the former court rules and by Appellate Rule 19(b). Subdivision (b) has been amended to reduce that number to fifteen, the reduction being applicable in civil and criminal cases alike. The requirement in subdivision (b) that two copies of briefs be served upon each party separately represented is consistent with former Appeals Court and Supreme Judicial Court Rules 1:16.

(1973)

Appellate Rule 19 sets the time table for the filing of briefs. Appellant must file his brief within 40 days after the docketing of the appeal (which occurs ten days after the record is assembled, see Appellate Rule 10(a); assembly occurs "as soon as may be after the filing of the notice of appeal," Appellate Rule 9(a)). Thus appellant's brief ordinarily must be filed approximately 50 days after the filing of his notice of appeal, (plus however long the lower court clerk requires for assembling the record). Appellee must file his brief within 30 days after service of appellant's brief. The appellant may serve a reply brief within 14 days after service of the appellee's brief. Although Appellate Rule 19 somewhat enlarges previous appellate timetables, see S.J.C. Rule 1:16 and Appeals Court Rule 1:16, it should occasion no unusual difficulties.

RULE 20: FORM AND LENGTH OF BRIEFS, APPENDICES, AND OTHER DOCUMENTS

(a) Form and Length of Briefs, Appendices, and Applications for and Responses to Direct and Further Appellate Review

(1) Form

(A) Except on order of the appellate court or a single justice, or if filed on behalf of a party allowed to proceed as an indigent party, all briefs, appendices, and applications for and responses to direct and further appellate review shall be produced by any duplicating or copying process which produces a clear black image on white paper. However produced, the page shall be 8.5 inches in width and 11 inches in height. Pages shall be firmly bound at the left, and a cover or front page shall be used.

(B) Visual aids, including images, photographs, illustrations, diagrams, charts, or tables, may be included in a brief, an application for direct or further appellate review, or a response to such an application. A visual aid shall:

(i) be supported by appropriate citation;

(ii) not include any material that is impounded; depicts a minor, violence, death, or pornography; or is otherwise gruesome or indecent in nature; and

(iii) comply with the requirements of Rule 18(a)(1)(F) concerning quality, legibility, accuracy, and color.

(2) Length of Briefs in All Cases Other than Cross Appeals

The following rules shall govern the length of briefs in all cases other than cross appeals:

(A) A principal brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.

(B) A reply brief shall either be produced in a monospaced font and not contain more than 20 pages, or be produced in a proportionally spaced font and not contain more than 4,500 words.

(C) An amicus curiae brief shall either be produced in a monospaced font and not contain more than 35 pages, or be produced in a proportionally spaced font and not contain more than 7,500 words.

(D) In all briefs, only those parts required by Rule 16(a)(5)-(11), including headings, footnotes, visual aids, and quotations, count towards the length limits.
(E) A motion to exceed these length limits shall specify the relevant issue or issues and why such issues merit additional pages or words, and will not be granted except for extraordinary reasons.
(F) The certification required pursuant to Rule 16(k) shall specifically state how compliance with the length limits of this rule was ascertained, as specified therein.

(3) Length of Briefs in Cases Involving Cross Appeals

The following rules shall govern the length of briefs in cases involving cross appeals:

(A) An appellant's principal brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.
(B) An appellee's principal and response brief shall either be produced in a monospaced font and not contain more than 60 pages, or be produced in a proportionally spaced font and not contain more than 13,000 words.
(C) An appellant's response and reply brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.
(D) An appellee's reply brief shall either be produced in a monospaced font and not contain more than 20 pages, or be produced in a proportionally spaced font and not contain more than 4,500 words.
(E) An amicus curiae brief shall either be produced in a monospaced font and not contain more than 35 pages, or be produced in a proportionally spaced font and not contain more than 7,500 words.
(F) In all briefs, only those parts required by Rule 16(a)(5)-(11), including headings, footnotes, visual aids, and quotations, count towards the length limits.
(G) A motion to exceed these length limits shall specify the relevant issue or issues and why such issues merit additional pages or words, and will not be granted except for extraordinary reasons.
(H) The certification required pursuant to Rule 16(k) shall specifically state how compliance with the length limits of this rule was ascertained, as specified therein.

(4) Format and Pagination of Text

The following rules shall govern the format of text on the pages of all briefs and applications for and responses to direct or further appellate review:

(A) If a monospaced font is used, the top and bottom margins shall be at least 1 inch. The left and right margins shall be at least 1.5 inches. If a proportionally spaced font is used, the top, bottom, left, and right margins shall be at least 1 inch. Page numbers shall appear in the margin with the cover paginated as page 1 pursuant to Rule 20(a)(6)(B)(vii) and pages thereafter numbered consecutively through the last page, including any addendum.
(B) The typeface of all text, including footnotes, shall be either (i) a monospaced font (such as Courier New) of 12 point or larger size and not exceeding 10.5 characters per inch; or (ii) a proportionally spaced font (such as Times New Roman) of 14 point or larger size.
(C) Text shall be double-spaced, except that argument headings, footnotes, visual aids, and indented quotations may be single-spaced. For purposes of this rule, single spacing means not more than 6 lines of text per vertical inch; double spacing means not more than 3 lines of text per vertical inch and not more than 27 double-spaced lines on a page.
(D) The text may appear on both sides of the page.

(5) Format, Pagination, and Length of Appendix

The following rules shall govern the format of appendices:

(A) The cover of each volume of the appendix shall be designated by a Roman numeral and paginated as page 1, and pages thereafter numbered consecutively through the volume's last page. The cover shall also contain the information identified in Rule 20(a)(6)(B).
(B) Each volume of the appendix shall be separately paginated, beginning at page 1.
(C) No single volume of an appendix, transcript or exhibit shall be more than 1.5" thick.
(D) The text of appendices filed on paper may appear on both sides of the page.

(6) Color and Contents of Cover

The following rules shall govern the color and contents of the cover of all briefs, appendices, and applications for or responses to direct or further appellate review:

(A) Color

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of a party intervening in the appeal, yellow; that of an amicus curiae, green; that of any reply brief, gray. The cover of the appendix shall be white. The cover or front page of an application for or response to direct or further appellate review shall be white. A color cover is not required for any electronically filed brief.

(B) Contents

The front covers of the briefs and appendices, in addition to the requirements for covers of appendices in Rule 20(a)(5), and of applications for or responses to direct or further appellate review shall contain:

(i) the name of the court and the number of the case;
(ii) the title of the case (see Rule 10(a));
(iii) the nature of the proceeding in the appellate court (e.g., Appeal; Application for Review) and the name of the lower court;
(iv) the title of the document (e.g., Brief for Appellant, Appendix);
(v) the name(s), personal pronouns (if the attorney or self-represented litigant elects), Board of Bar Overseers (BBO) number(s), if any, mailing and electronic addresses, and telephone number(s) of the person(s) filing the document, and, if any individual counsel is affiliated with a firm or office, the office name; and
(vi) where it is necessary to include impounded material in a brief, the notification required by Rule 16(m).
(vii) The cover shall be paginated as page 1.

(7) Substantial Compliance Required

Briefs, appendices, or applications for or responses to direct or further appellate review not in substantial compliance with these rules shall not be docketed unless the appellate court or a single justice shall otherwise order.

(b) Form of Other Documents

(1) Motions for Reconsideration or Modification

Motions for reconsideration or modification shall be produced in a manner prescribed by Rule 27(b).

(2) Motions and Other Documents

(A)

A motion or other document addressed to an appellate court shall contain a caption setting forth the name of the court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the document; the caption shall appear on the first page. Lines of text shall be double-spaced and shall be in 12 point or larger font, with side and top margins no less than 1 inch, and shall be no longer than reasonably necessary. Consecutive pages shall be stapled at the upper left margin.

(B)

Such motion or document shall contain, at the end thereof

(i) the printed and signed name(s), personal pronouns (if the attorney or self-represented litigant elects), Board of Bar Overseers (BBO) number(s), if any, mailing and electronic addresses, and telephone number(s) of the person(s) filing the document, and, if any individual counsel is affiliated with a firm or office, the office name, and
(ii) the date of signing.

Rule History

Amended effective February 24, 1975; amended effective February 1, 1991; amended effective January 1, 1992; amended December 1, 1998, effective January 1, 1999; amended March 5, 2010, effective May 1, 2010; amended October 31, 2018, effective March 1, 2019; amended July 7, 2021, effective September 1, 2021; amended effective May 1, 2024.

Reporter's Notes

(2024)

The Supreme Judicial Court amended S.J.C. Rule 1:08 (1) (H) effective October 1, 2022, to permit filers to include their personal pronouns with the filer's name or signature. In 2024, the Massachusetts Rules of Appellate Procedure were amended to incorporate the option into Mass. R.A.P. 20(a)(6)(B)(v) and 20(b)(2)(B)(i). The amendment expressly allows people to include preferred personal pronouns on court filings. The information informs judges, opposing counsel, and court personnel of a person's pronouns in advance of a hearing or communication, and can help prevent inadvertent misidentification during legal proceedings. See J. Stanton & Y. Taylor, Utilizing and Normalizing Personal Pronouns in Legal Filings, Proceedings, and Communications, 67 B.B.J. #2 (Spring 2023).

(2021)

Rule 20(a)(1) was amended by labeling the existing paragraph as (A), with no change to its text, and adding (B) as a new paragraph. Rule 20(a)(1)(B) is similar to Fed. R. App. P. 32(a)(1)(C) ("Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy"), but Rule 20(a)(1)(B) requires citations for all visual aids, encompasses visual aids beyond those listed in the federal rule, limits inclusion of certain sensitive material, and, consistent with Mass. R. A. P. 18(a)(1)(F), requires that visual aids be of high quality, legible and accurate representations, and in color if color is relevant. Rule 20(a)(1)(B) allows parties to include visual aids in an appellate brief, as well

as in any application for direct or further appellate review, or response thereto. While visual aids appearing in the lower court record are required to be reproduced in the record appendix when appropriate, see Mass. R. A. P. 16(e) and 18(a)(1)(A), their inclusion in briefs, applications, or responses has not been expressly endorsed in the rules. Nevertheless, the Massachusetts appellate courts have traditionally accepted briefs, applications, and responses which contain visual aids, and this amendment codifies that practice.

Visual aids tend to help the reader. For example, a visual aid may make it easier to conceptualize a location at issue, relationships among parties, an organization's structure, a sequence of events, or the factual or procedural history of the case. The new paragraph (B) to Rule 20(a)(1) eliminates any uncertainty about whether visual aids may be used in a brief or application and promotes awareness of the option. The examples of permissible categories of "visual aids" described in the first sentence of Rule 20(a)(1)(B) are not intended to be exclusive. For example, a visual aid may also be a map, screenshot, or reproduction of text messages.

Subparagraphs (i)-(iii) of Mass. R. A. P. 20(a)(1)(B) are not included in Fed. R. App. P. 32(a)(1)(C). These subparagraphs establish conditions for using visual aids and identify certain visual aids that are prohibited. First, Mass. R. A. P. 20(a)(1)(B)(i) specifies that, to be included in a brief, application, or response, a visual aid must be supported by appropriate citation. The addition of Mass. R. A. P. 20(a)(1)(B) is not intended to change current practice or rules concerning the types of information permitted in briefs, applications, or responses, or citation or record appendix requirements. Accordingly, a visual aid derived from the record below must be supported by citation(s) to the record, see Mass. R.A.P. 16(e), and the portion(s) of the record in which the visual aid appears or from which it is derived must be reproduced in the record appendix, see Mass. R. A. P. 18(a)(1)(A)(v). To the extent other facts, information, or argument outside the record below would be permitted in the text of a brief, application, or response, see, e.g., Mass. Guide to Evid. Art. II, it may be included as a visual aid, but any such visual aid must be supported by citation to its source(s).

Second, Mass. R. A. P. 20(a)(1)(B)(ii) prohibits from inclusion in a brief, application, or response any visual aid that is categorized as impounded under Massachusetts law. See Mass. Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, Rule 1(9) ("'Impounded' information includes material that a statute, court rule, standing order, case law, or court order designates must be withheld as 'impounded,' 'withheld from public inspection,' 'not available for public inspection,' 'segregated,' or 'confidential,' though these terms are not exhaustive."); S.J.C. Rule 1:15, § 2 (maintaining confidentiality of previously impounded cases on appeal).

Rule 20(a)(1)(B)(ii) also prohibits any visual aid that "depicts a minor, violence, death, or pornography[,] or is otherwise gruesome or indecent in nature." This provision is intended to facilitate public access to briefs. The appellate courts' websites post briefs filed in non-

impounded cases. In such cases, the inclusion of visual aids in a filing that will be posted on the internet raises considerations involving personal and sensitive information or privacy interests. Cf. Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web, 1 (May 2003) ("This policy attempts to balance our dual interests in making information about the courts available and accessible, and in protecting personal and sensitive information from indiscriminate disclosure."). Rule 20(a)(1)(B)(ii) prohibits inclusion of graphic or disturbing visual aids to avoid the indiscriminate publication of such content and any need for the courts to restrict public web access to the filing solely because of a visual aid's nature or content. In addition, the rule is intended to protect minors and others with legitimate privacy interests. Images of any person or party, minor or adult, particularly of an identifiable facial image, are disfavored and should not be included in a brief, application, or response unless blurred or cropped, or unless the image or a person's appearance or identity is at issue on appeal. An unaltered visual aid must also be included in the record appendix. Finally, this provision serves to limit the inadvertent viewing of graphic or disturbing content. Advocates' briefs may still refer the justices to any visual aid contained in the record appendix.

Third, Mass. R. A. P. 20(a)(1)(B)(iii) requires that visual aids be legible and accurate, and in color if the visual aid is a reproduction of an exhibit marked or admitted below in color or if color is relevant, consistent with Mass. R. A. P. 18(a)(1)(F). Any alteration or change to an exhibit included as a visual aid in a brief, application or response must be clearly explained, such as, "Copy of Ex. 4, defendant's face blurred"; "Copy of Ex. 5, reduced in size"; "Copy of Ex. 6, minor's face blurred"; "Copy of Ex. 7, cropped to exclude victim's body"; or, "Copy of Ex. 8, arrow added to show contested portion."

The court may sua sponte or upon motion strike any material that is inappropriate or not in substantial compliance with the rules. See Mass. R. A. P. 16(k) & 20(a)(7).

Length Limitations. Because visual aids add length to a brief, application, or response, they must be accounted for in determining its length. Accordingly, amendments to Mass. R. A. P. 20(a)(2)(D) and 20(a)(3)(F) clarify that any visual aids included in a brief, application, or response count towards the applicable length limit as described herein. For parties using a proportionally-spaced font and word limit, only visual aids with words or numerals will count towards the final word count of the document. The "word count" feature of common word-processing programs may not recognize and calculate words or numerals included in a visual aid. A party filing a brief, application, or response using the word-limit option is responsible for manually counting words and numerals in visual aids, if necessary, and reflecting that information on the certificate of compliance required by Mass. R. A. P. 16(k). The certificate may explain the basis of the calculation or any estimate. For parties using a monospaced font and page limit, any visual aid, regardless of whether it has text, must be included in the length limit. See Rule 20.

Parties are cautioned that the inclusion of visual aids may increase substantially the megabyte size of an electronic brief, application, or response, thereby rendering the file too large to file electronically as a single document. This is particularly true for documents that include a visual aid in color.

Finally, Mass. R. A. P. 20(a)(4)(C) is amended to explicitly provide that visual aids may be single spaced.

(2019)

The title of Rule 20 was amended to indicate that it encompasses the length of the referenced appellate documents, as well as the form. In addition, prior Rule 20's paragraphs were numbered, reordered, revised, and new paragraphs were added for clarity and ease of reference.

Rule 20(a). The title of this subdivision was amended to indicate that it applies both to the form and length of briefs, appendices, and applications for, and responses to, direct and further appellate review.

Rule 20(a)(1) addresses the form of briefs, appendices, and applications for, and responses to, direct and further appellate review. Reference to the format of appendices in the first paragraph of the prior rule was deleted and the content, with revisions, was relocated to Rule 20(a)(5).

Rules 20(a)(2) and 20(a)(3) are new paragraphs. Rule 20(a)(2) addresses the length of briefs in all cases other than cross appeals, and Rule 20(a)(3) establishes the length of briefs in cross appeals. These paragraphs allow the use of a word limit together with a proportionally spaced font, as an alternative to a page limit, in setting the permissible lengths of principal and reply briefs. The word limits are not intended to allow for longer documents. The limits allow no more than the amount of text permitted under the prior rules. For a comprehensive discussion of the word count amendment, see the 2019 Reporter's Notes to Rule 1.

Rule 20(a)(4). 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). The revisions include the addition of applications for, and responses to, direct and further appellate review to clarify that the text requirements also apply to these documents. In addition, the rule was amended to include the word count alternative to the page limit.

Rule 20(a)(4)(A) provides that if a proportionally spaced font is used, all margins shall be at least one inch. This is intended to improve readability and is consistent with the analogous Federal rule. See Fed. R. App. P. 32(a)(4). The subparagraph retains the traditional 1.5 inch left and right margins from prior Rule 20(a)(1) only if a monospaced font is used.

Rule 20(a)(4)(A) also specifies the pagination requirements for briefs and applications for and responses to direct or further appellate review. The page numbers shall appear in the margin with the cover paginated as page one pursuant to Rule 20(a)(6)(B)(vii), and pages thereafter numbered consecutively through the last page. Any addendum is included in this requirement and should continue the pagination of the document itself without beginning again at page one.

This provision is intended to facilitate reading documents in electronic form.

Rule 20(a)(5) is a new paragraph addressing the format and length of a record appendix.

The rule requires that the cover of each volume of the appendix be designated by a Roman numeral, that each volume of the appendix be separately paginated with the cover designated as page 1, and that pages thereafter be numbered consecutively through the volume's final page.

This paragraph is intended to facilitate reading appendices in electronic form.

Rule 20(a)(6). The content from the final paragraph of prior Rule 20(a) was revised, relocated to Rule 20(a)(6), and separated into new subparagraphs. Rule 20(a)(6)(A) addresses the color of the cover of briefs, appendices, and applications for or responses to direct or further appellate review. Rule 20(a)(6)(B) specifies the contents of the cover of briefs and appendices.

Rule 20(a)(6)(A). The content of the prior rule was revised to change the color of the cover of a brief filed by a party intervening in the appeal from green to yellow. This is intended to prevent confusion with the color of a brief of an amicus curiae, which is required to be green. Text was also added to clarify that the cover to applications for, or responses to, direct or further appellate review are white. Finally, the phrase "if separately bound" was removed from the existing requirement that appendix covers be white because under Rule 18(a), as amended, all appendices must now be bound separately from the brief. Color requirements do not apply to electronically-filed briefs.

Rule 20(a)(6)(B). The requirements regarding the contents of the cover of these documents were revised. The word "e-mail address" was revised to "electronic address," to clarify that both "mailing and electronic addresses" are required. Explicit reference to Rule 16(m) was added to ensure briefs referencing impounded material are clearly marked.

Rule 20(a)(7). The content from the first sentence of the third paragraph of prior Rule 20(a) was converted into new stand-alone Rule 20(a)(7). This amendment was made in order to separate the requirements for the form and length of briefs and appendices from the consequences should a brief or appendix not be in substantial compliance with Rule 20.

Prior Rule 20(b) was divided into two separate paragraphs. The first paragraph of prior Rule 20(b) is now Rule 20(b)(1). Reference to "[p]etitions for rehearing" was changed to "motion for

reconsideration or modification," consistent with revisions to Rule 27. See 2019 Reporter's Notes to Rule 27. Language prescribing the form of a motion for reconsideration or modification was stricken and replaced with an explicit reference to Rule 27, which provides for the form of such a motion.

The remaining paragraphs of prior Rule 20(b) now encompass Rule 20(b)(2). Specifying in one paragraph the required structure for motions promotes clarity for parties submitting motions, and will promote a consistent format for review by the court. Rule 20(b)(2)(A) was added to specify basic formatting and length requirements of motions. There is no page limit for motions, but motions "shall be no longer than reasonably necessary." In some circumstances, the appellate courts have specified page limits of a motion. See Appeals Court Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R.A.P. 6 (setting 5 page limit for motion and 15 page limit for supporting memorandum of law). Rule 20(b)(2)(B) includes language added to the requirements for the end of a motion included in the prior rule to specify that "address" includes both the electronic and mailing address of the party, and to require the inclusion of the date of signing.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

Reporter's Notes (2010) Rule 20(a)(4) has been amended to require attorneys to include their e-mail addresses, if any, on the front cover of briefs and appendices. A similar amendment to Mass. R. Civ. P. 11(a) was adopted in 2010 requiring attorneys to include their e-mail addresses on pleadings.

(1999) [Rule 20(a)]

I. Introduction

Since the adoption of the Massachusetts Rules of Appellate Procedure in 1974, there have been only a few changes to Appellate Rule 20. With the advances in computer technology that have ensued since the 1970s, the Standing Advisory Committee on the Rules of Civil Procedure of the Supreme Judicial Court agreed with the recommendation of the clerks of the Supreme Judicial Court and of the Appeals Court that the time had come to re-examine Appellate Rule 20.

II. Briefs

A number of changes to the existing rule were made in recognition of the fact that briefs today are typically computer-generated, whether an attorney produces a brief in-house or utilizes the services of a commercial firm. For example, outmoded references in the first paragraph of Rule 20(a) such as “standard typographic printing” and “printed matter” have been deleted. The reference to carbon copies has also been deleted.

The 1999 amendment also addresses a problem that has developed in recent years in the appellate courts of the Commonwealth. Judges have commented that in some instances briefs have been difficult to read because of the small size of letters. In addition, today’s computer technology has provided opportunity for circumvention of the page limitations on briefs by compressing or condensing letters. If a brief is rejected by the clerk’s office for such reasons, frustration and the additional expense of producing a replacement brief result. See “Strict Rule on Briefs Frustrates Litigators,” 26 Massachusetts Lawyers Weekly 55 (September 15, 1997). A new second paragraph has been added to Rule 20(a) to address these and other matters of form.

It should be noted the existing page limitations on briefs produced by computer word-processing — as contained in Appellate Rule 16(h) — remain the same.

The following provisions numbered (1) through (4) are applicable to all briefs under the amended rule:

(1) Margins

Top and bottom margins on a page shall be at least one inch; left and right margins must be at least one and one-half inches. The rule specifically allows a page number to be placed within a margin. Uniformity in margins will also facilitate the placing of text on both sides of a page of a document, a practice permitted by Rule 20(a)(4).

(2) Typeface

Only a monospaced font is allowed. Therefore, attorneys may no longer use a proportional font such as Times New Roman. The typeface must be a 12 point or larger size and a limitation of 10.5 characters per inch is imposed. It should be noted that these limitations are applicable to footnotes as well as text. These requirements should eliminate the problem brief where page limitations have been circumvented by means of reducing, compressing, or condensing typeface.

Right margin justification (the process by which the lettering on a line is spaced so that the last letter on each line is flush to the right margin) is not prohibited by this rule, as long as the right margin is at least one and one-half inches and the limitation of 10.5 characters per inch is observed.

(3) Line Spacing

Documents are to be double-spaced. Argument headings, footnotes, and indented quotations, however, may be single-spaced. The revised rule defines the terms double-spaced and single-spaced — terms which may have been obvious in the context of a brief produced by a typewriter — so that there will be no more than three lines per vertical inch for double spacing and no more than six lines per vertical inch for single spacing (with an overall limit of 27 double-spaced lines on a page).

(4) Text May Appear on Both Sides

The prior version of Rule 20(a) did not speak to the issue of text appearing on both sides of a page. In recent years, some attorneys have begun to submit briefs where the text appears on the front and back of a page. The 1999 amendment specifically allows this practice. Although it is not required that text must appear on both sides of a page, attorneys are encouraged to produce briefs in this fashion. It is hoped that the practice of putting text on the front and back of a page will significantly reduce the storage problems in the clerks' offices of the appellate courts by reducing the overall size of briefs.

Where counsel is unable to comply with the technical requirements of Rule 20, it would be advisable to move in the appellate court in advance for leave to file a non-conforming brief rather than risk rejection of the filing at a point where time deadlines may be about to expire.

III. Appendices

The 1999 changes regarding briefs do not apply to the appendix. An appendix may contain existing documents, transcripts, and other matters that were not originally prepared by counsel. However, in an effort to help reduce the storage problems in the clerk's offices of the appellate courts, a sentence has been added to Appellate Rule 20(a) allowing the text of the appendix to be reproduced on both sides of a page, a practice that is also allowed (and in fact, encouraged) for briefs.

(1999) [Rule 20(b)]

Appellate Rule 20(b), governing the form of papers other than briefs and appendices, has been amended to require that the cover of applications for direct appellate review (Rule 11) and for further appellate review (Rule 27.1) be white. This will allow the clerk's office more easily to identify such documents.

(1991)

[Rule 20(a), first paragraph] Experience has shown that volumes of appendices that are more than one and a half inches thick often fall apart and are clumsy to use. The limitation of each individual

volume of the appendix to a thickness no greater than one and a half inches should solve the problem. If the appendix is larger in size, multiple volumes should be used.

[Rule 20(a), final sentence, clause (5)] These amendments [to Mass. R.A.P. 16(a)(7) and 20(a), final sentence, clause (5)] require individual counsel who are affiliated with a firm to include the firm name on filed briefs. Appellate judges need to know the firm names in order to determine correctly whether it is necessary to withdraw from a case.

(1979)

Subdivision (a) of Rule 20 was made applicable to criminal cases by former Appeals Court and Supreme Judicial Court Rules 1:14 (1975: 3 Mass. App. Ct. 803. 366 Mass. 860) and is unchanged.

(1975)

The amendment to Appellate Rule 20(b) eliminates the requirement of "backing" the caption, so as to conform to the introduction of flat filing; see S.J.C. Rule 3:20.

(1973)

Appellate Rule 20 permits briefs and appendices to be reproduced either by printing or by any duplicating process which produces a clear black image on white paper. Thus briefs may be xeroxed. However produced, briefs must be firmly bound or stapled, and must ordinarily bear color-coded covers: blue for the appellant; red for the appellee; gray for the reply brief; green for an amicus (if allowed, see Appellate Rule 17). The record appendix, if separately produced, should be covered in white. Motions may be either typewritten or xeroxed.

RULE 21: PROTECTION OF PERSONAL IDENTIFYING INFORMATION

Publicly accessible documents filed with the court shall conform to Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 21 was completely revised in 2019. Prior Rule 21 allowed the 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." This 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.

Rule 21 was revised to encompass requirements related to the redaction of publicly available documents. The amendment serves to alert attorneys, parties, and interested members of the public to the requirements of S.J.C. Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents. Under S.J.C. Rule 1:24, unless there is an exception, personal identifying information, such as social security numbers, parent's birth surnames, driver's license numbers, and financial account numbers, may not be included in documents filed in court unless redacted as set forth in the rule. Identical cross-references to S.J.C. Rule 1:24 were added in 2017 to Mass. R. Civ. P. 5(h) and Mass. R. Crim. P. 32(f).

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1973)

Appellate Rule 21 allows the court to conduct a prehearing conference. Modeled on F.R.A.P. 33, it has no Massachusetts parallel at the appellate level.

RULE 22: ORAL ARGUMENT

(a) Notice of Argument; Postponement

The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument

Unless otherwise enlarged or limited by the appellate court, each side will be allowed 15 minutes for argument, except in a criminal case in which the defendant is appealing from a conviction of murder in the first degree, in which case each side will be allowed 20 minutes for argument. Reasonably in advance of the date fixed for oral argument, a party may move for additional time for good cause shown. The appellate court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument

(1) Oral Argument

The appellant will argue first. Nothing argued in the brief shall be deemed to be waived by a failure to argue orally.

(2) Post-Argument Filings

After the oral argument of a case has been concluded or the case has been submitted on the documents without oral argument, no brief, memorandum, or letter relating to the case, except a citation of supplemental authorities letter filed pursuant to Rule 16(l), shall be submitted to the court, except to correct a factual misstatement during oral argument, or when such a writing was expressly allowed or requested by the court during the argument, or upon allowance of a motion to submit such a writing. Any such writing allowed during oral argument shall state that the court allowed the submission. A submission containing argument on the merits and not otherwise in compliance with this rule may be struck by the court.

(d) Cross and Separate Appeals

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the appellate court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-appearance of Parties

Parties are expected to appear for oral argument unless prior arrangements have been made with the court. If the appellee fails to appear to present argument, the appellate court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the appellate court shall otherwise order.

(f) Submission on Briefs

By agreement of the parties, a case may at any time be submitted for decision on the briefs, but the appellate court may direct that the case be argued. At any time, any party may, by written notice filed and served, waive the party's right to oral argument. No criminal case in which the defendant was convicted of murder in the first degree may be submitted for decision on the briefs without oral argument unless the appellate court or a justice thereof shall have approved the submission prior to the week the case has been scheduled for argument.

(g) Use of Physical Exhibits at Argument; Removal

If physical exhibits other than documents are to be used at the argument, the party shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument, the exhibits shall be left with the clerk unless the court otherwise directs. If exhibits are not reclaimed by the party within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended December 2, 1983, effective January 1, 1984; amended effective May 1, 1994; amended effective November 1, 1994; amended May 3, 2002, effective September 3, 2002; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 22(b) was amended to clarify that requests for additional argument time must be made reasonably in advance of the date fixed for oral argument.

Rule 22(c) was revised into two paragraphs. Rule 22(c)(1) addresses the rules for oral argument. The sentence providing that nothing argued in a brief is deemed waived by a failure to argue orally was relocated from prior Rule 16(a)(4) because Rule 22 is a more appropriate location as it concerns procedures for oral argument. Rule 22(c)(2) is a new paragraph that clarifies the procedure and limits of a post-argument filing. Once oral argument is completed, a party may not submit any additional argument on the merits in the case other than a citation of supplemental authorities pursuant to Rule 16(l), a letter correcting a factual misstatement of any party during oral argument, or when otherwise allowed by leave of court. Although a letter containing citation of supplemental authorities pursuant to Rule 16(l) does not require leave of court, a submission containing argument on the merits does, and may be struck by the court if no leave has been

granted. This amendment is not intended to modify existing practice where a justice requests or permits a party to file a letter at oral argument. A party who is given leave during oral argument should identify that leave has been given in the party's post-argument filing.

Rule 22(d) previously included a sentence relating to designation of the parties in a cross appeal. The substance of this sentence was moved to Rule 10(a)(7), which governs the docketing of an appeal. A party's designation, including in any cross appeal, is important at the outset of the case.

Rule 22(e). The first sentence was added to clarify that parties do not have the option not to attend oral argument without prior arrangements having been made with the court.

Rule 22(f), which previously prohibited an attorney who has been a witness in a case from appearing at oral argument without leave of court was stricken because there are several circumstances in which an attorney may testify under Mass. R. Prof. C. 3.7(a). The subsequent subdivisions were re-lettered.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2002)

In 2002, the Supreme Judicial Court amended Appellate Rule 22(b) to reduce the time allowed for oral argument in first-degree murder cases from 30 minutes to 20 minutes for each side. The time for oral argument in all other cases remains 15 minutes for each side. As amended, Appellate Rule 22(b) further provides that if counsel desires additional time for oral argument, "counsel may request additional time for good cause shown." This latter provision replaces the former language that had provided that requests for additional time "will rarely be granted."

(1994)

[Rule 22(h)] Mass. R.A.P. 22(h) does not give permission to counsel to refer to physical exhibits during oral argument. It only instructs counsel as to their obligation to arrange to have the physical exhibits in the court room before the court convenes if they are going to use them, and of the clerk's obligations afterwards.

Counsel should remember that it is their obligation to include in the appendix any portions of the record they are relying upon, including exhibits, in accordance with the provisions of Mass. R.A.P. 18(a) and 18(b). The third paragraph of Mass. R.A.P. 18(a) makes clear that ". . . the court may decline to permit the parties to refer to portions of the record omitted from the appendix, unless leave be granted prior to argument."

Physical exhibits cannot be actually placed in an appendix. Consequently, counsel on appeal who intend to refer to a physical exhibit, such as a revolver or a piece of clothing, should "prior to argument" seek leave of court to refer to such objects. Many appellate justices prefer to have pages in an appendix to refer to whenever possible. It is sound practice for counsel on appeal to have a photograph of physical exhibits appear on a page or pages of the appendix, even if prior permission has been given to use the actual physical exhibit at the oral argument.

(1984)

[Rule 22(b)] The purpose of this amendment is to conform Rule 22(b) to the actual practice in the appellate courts.

[Rule 22(c)] The purpose of this amendment is to conform Rule 22(c) to the actual practice in the appellate courts.

(1979)

[Rule 22(g)] The only change in Rule 22 is that the substance of Supreme Judicial Court Rule 1:20 (1975: 366 Mass. 862), relative to submission of capital cases on briefs, is added to subdivision (g) of the former rule. The provisions of Rule 22 were previously applicable to criminal appeals by virtue of Supreme Judicial Court Rule 1:20, supra, and Appeals Court Rule 1:20 (1975: 3 Mass. App. Ct. 804).

(1973)

Appellate Rule 22 governs the conduct of oral argument. A modification of F.R.A.P. 34, it codifies prior practice. Enlargements of argument time beyond thirty minutes will rarely be allowed; compare F.R.A.P. 34(b). Rebuttal argument, a matter of right, Appellate Rule 22(c), is strictly limited to new matter raised in appellee's argument. Although failure explicitly to reserve rebuttal does not waive the right, failure to preserve for rebuttal purposes a portion of the thirty-minute argument time will effect a de facto waiver in the absence of leave granted.

RULE 23: NOTICE OF DECISION; ISSUANCE OF RESCRIPT; STAY OF RESCRIPT

(a)

The clerk of the appellate court shall send to all parties copies of or a link to the rescript and the decision, if one was written, on the day the decision is released.

(b)

The rescript and the decision of the appellate court shall issue to the lower court 28 days after the date of the decision unless the time is shortened or enlarged by order, except as provided by Rule 23(c).

(c)

The issuance of the rescript will automatically be stayed, unless otherwise ordered by the appellate court, by the timely filing of: (1) a motion for reconsideration or modification pursuant to Rule 27; or (2) an application for further appellate review pursuant to Rule 27.1. The rescript shall issue forthwith after both the disposition of any motions for reconsideration or modification and the denial of any applications for further appellate review, unless the appellate court or a single justice orders otherwise. If an application for further appellate review is granted, the rescript of the Appeals Court shall not issue to the lower court.

Rule History

Amended effective February 24, 1975; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The title and body of Rule 23 were revised for consistency with the new definition of "decision," and revised definition of "rescript" in Rule 1(c). These revisions clarify the distinction between the clerk's release of a decision to the parties and the clerk's issuance of the rescript to the lower court. Prior Rule 23's use of the word "rescript" often confused parties because it referred both to the appellate court's decision and to the order or direction to the lower court disposing of the appeal that is transmitted to the lower court 28 days after the release of the court's decision. This

confusion resulted sometimes in parties not filing timely petitions for rehearing (the term used for Rule 27's motion for reconsideration or modification of decision prior to the 2019 amendments to the Rules) or applications for further appellate review since each filing was due within a specific time after the date of the rescript.

Rule 23(a) identifies the clerk's responsibilities to issue notice of the appellate court's release of a decision, and in Rule 23(b) to issue the rescript to the lower court. When read together, the amendments to Rules 23(a), 23(b), 27(a), and 27.1(a), establish the sequence of events that occur when an appellate court releases a decision: the clerk notifies the parties, the time period commences for filing a motion for reconsideration or modification (and, if the decision is released by the Appeals Court, an application for further appellate review), and the clerk issues the rescript and decision to the lower court 28 days later unless such issuance is stayed for one of the reasons delineated in Rule 23(c). Rule 23(a) was also revised to include that the appellate court clerk may electronically transmit a decision and rescript.

Rule 23(c). Consistent with amendments to Rule 27, the term "petition to rehearing" was changed to "motion for reconsideration or modification."

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

The current text is unchanged but made applicable to criminal as well as civil cases.

(1975)

The amendment enlarges the period for the issuance of rescript from 14 days to 28 days. This change was required by the amendment to Appellate Rule 27.1(a), extending the period within which the party could apply for further appellate review from 10 days to 20 days. Without the amendment to Appellate Rule 23, therefore, a party properly waiting until the twentieth day to file his application for further appellate review might find that the rescript had issued six days earlier, thus cutting off his additional appellate rights. The other amendment to Appellate Rule 23 merely substitutes "petition" for "request" to conform with the language of Appellate Rule 27.

(1973)

A rescript is the equivalent at the appellate level, of judgment in the trial court, Appellate Rule 1(c); Mass. R. Civ. P. 54(a). It is the appellate court's enunciation of its disposition of the appeal, the order directing the lower court's further conduct of the case. Usually, the rescript will issue to the lower court within fourteen days of its utterance by the appellate court. But a timely application for rehearing, Appellate Rule 27, or for further appellate review (if appropriate), Appellate Rule 27.1, will stay the issuance of the rescript.

RULE 24: JUSTICES' PARTICIPATION

(a) Other Justices May Participate Without Reargument

Whenever the justices before whom a case has been heard so desire, others of the justices may be called in to take part in the decision, upon a review of the record and briefs, and the recording of any oral argument, without reargument.

(b) Replacement of Justices

If a justice who has participated in a case becomes unable to participate further, then the Chief Justice of the appellate court may substitute another justice.

(c) Justice May Review Own Ruling in Certain Cases

No justice shall sit on the hearing of any proceeding in the nature of a review of any judgment, decree, order, or ruling made by that justice; provided, however, that this shall not apply where it is necessary to secure a quorum or where the other justices of the court shall be equally divided in opinion.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 24(a) was revised to clarify that the recording of any oral argument is part of the record for review of a justice called in to take part in a decision after oral argument. The word "perusal" was replaced with "review." Although the terms have nearly identical meanings, "review" is more commonly used today.

Rule 24(b) is a new subdivision and, conformably with current practice, allows for the replacement of a justice should that justice become unable to participate in the case. The Chief Justice of the appellate court has the authority to make the substitutions as needed. Prior Rule 24(b) was re-lettered Rule 24(c).

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

Rule 24 is unchanged, but in criminal cases supersedes former Appeals Court and Supreme Judicial Court Rules 1:18 (1972: 1 Mass. App. Ct. 892, amended, 1975: 3 Mass. App. Ct. 801. 1967: 351 Mass. 731, amended, 1975: 366 Mass. 853) and 1:19 (1975: 3 Mass. App. Ct. 804. 1967: 351 Mass. 741-42, amended, 1975: 366 Mass. 853).

(1973)

Appellate Rule 24(a) permits the participation in a decision of a justice who has not heard argument. Appellate Rule 24(b) regulates a justice's participation in review of his own ruling. The rule codifies prior practice, S.J.C. Rule 1:18, 1:19; Appeals Court Rule 1:18.

RULE 24.1: [RESCINDED]

Rescinded October 31, 2018, effective March 1, 2019.

Reporter's Notes (2019)

Prior Rule 24.1 described the procedure for when there is a divided vote on further appellate review. The procedure governing applications for further appellate review is otherwise set forth in Rule 27.1. Instead of having separate but related parts of the same topic in nonconsecutive rules, the 2019 revision deleted Rule 24.1 and relocated its substance to Rule 27.1(g).

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

RULE 25: APPELLATE PROCEDURE RULE 25: APPELLATE ATTORNEY'S FEES AND COSTS

(a) Award of fees and costs

Where (i) a party makes a request for appellate attorney's fees and costs pursuant to Rule 16(a)(10), and (ii) the appellate court determines that such fees and costs are permitted or required by contract, statute, regulation, rule, or other law, or that an appeal in a civil case is frivolous, the appellate court may, or shall if required, award appellate attorney's fees and costs. If the appellate court determines that an appeal in a civil case is frivolous, the appellate court may also award double costs, or such interest as may be allowed by law, or both.

(b) Procedure

Within 14 days of a decision or order granting a request pursuant to Rule 25(a), or such other time as the appellate court may order, the party seeking appellate attorney's fees and costs shall file a written application, supported by affidavits and any appropriate supporting materials. Any other party may respond within 14 days of service of such application, or within such other time as the appellate court may order.

(c) Enforcement

Any proceedings to enforce an amount awarded under this rule shall be commenced in the lower court.

Rule History

Amended December 22, 1978, effective January 15, 1979; amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019; amended July 13, 2026, effective September 1, 2026.

Reporter's Notes

(2026)

Rule 25 has been revised and broadened to encompass any situation in which attorney's fees and costs may be available in an appellate court (as defined in Rule 1(c), and thus not including single justice proceedings). This revision of Rule 25 reiterates the requirement of Rule 16(a)(10) that any request for appellate fees and costs must appear in the party's brief on appeal—including for appeals (interlocutory or otherwise) where a party's ultimate entitlement to appellate fees may not be resolved until after proceedings on remand. See Brown v. F.L. Roberts & Co., Inc., 452 Mass. 674, 688-689 (2008); T & D Video, Inc. v. City of Revere, 450 Mass. 107, 114-116 (2007). The revision also codifies the procedures currently followed in the appellate courts, thereby obviating the need to refer to Fabre v. Walton, 441 Mass. 9 (2004), in cases where fees or costs may be available. Previously, Rule 25 addressed only frivolous appeals in civil cases, but appellate fees and costs may be available in a variety of other situations in civil cases, including when authorized by statute or contract. Such fees and costs may also be available in some criminal cases, see, e.g., Mass. R. Crim. P. 15(d), 25(c)(2), 30(c)(8)(B), and 30(c)(9) (providing in each case that fees and costs shall be "paid on the order of the trial court upon the entry of the rescript or the denial of the application"), yet until now the appellate rules have not addressed those situations. This revision of Rule 25 establishes standard procedures applicable across all appellate court cases for seeking such fees and costs.

(2019)

The title of Rule 25 was revised by replacing the word "Delay" with "Frivolous" to more accurately describe the topic addressed by the rule. Additionally, the substance of the free-standing parenthetical subtitle "(Applicable to Civil Cases)" indicating the rule applies only in civil cases was moved to the title of the rule and expressly referenced in the body of the rule to improve clarity. The final sentence was added to reflect existing practice of the appellate courts, and is similar to Fed. R. App. P. 38.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a

summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

Rule 25 is limited to civil cases.

(1973)

Appellate Rule 25, taken from F.R.A.P. 38, allows the court to award damages and appropriate costs if it determines that an appeal was taken frivolously. See Oscar Gruss & Son v. Lumberman's Mutual Casualty Co., 422 F.2d 1278, 1283-1284 (2d Cir. 1970). This is new to Massachusetts practice.

RULE 26: COSTS IN CIVIL CASES

This rule applies only to civil cases.

(a) To Whom Allowed

Except as otherwise provided by law or ordered by the court, (1) if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed to by the parties; (2) if a judgment is affirmed, costs shall be taxed against the appellant; (3) if a judgment is reversed, costs shall be taxed against the appellee; (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as ordered by the appellate court. Costs shall not be taxed against a party determined indigent in the same proceeding.

(b) Costs For and Against the Commonwealth

In cases involving the Commonwealth or an agency or officer thereof, if an award of costs against the Commonwealth is authorized by law, costs shall be awarded in accordance with the provisions of Rule 26(a); otherwise, costs shall not be awarded for or against the Commonwealth.

(c) Costs of Briefs and Appendices

The cost of printing or otherwise producing necessary copies of briefs and appendices shall be taxable in the lower court at rates not higher than those generally charged for such work in the Commonwealth. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which shall be filed with the clerk of the lower court, with proof of service, within 14 days after the entry of judgment.

(d) Clerk to Insert Costs in Lower Court Judgment; Costs Taxable

The clerk of the lower court shall prepare and certify an itemized statement of costs on appeal for insertion in the lower court judgment. The following costs on appeal are taxable in the lower court for the benefit of the party entitled to costs under this rule:

(1) copies under Rule 26(c);
(2) costs incurred in the preparation and transmission of the record;
(3) the reporter's transcript, if necessary to determine the appeal;
(4) the premiums paid for any bond to preserve rights pending appeal;
(5) the fee for docketing the appeal under Rule 10(a)(1); and
(6) the cost of any convenience fees and other administrative fees levied for the privilege of paying fees or costs by credit card or other means, including, but not limited to, fees for electronic filing of documents or pleadings with the court.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The free-standing parenthetical subtitle "(Applicable to Civil Cases)" in prior Rule 26 was deleted and its substance moved to the title of Rule 26 and to the introductory sentence.

Rule 26(a) was revised to simplify the language of the sentence and add numbering to the various scenarios in which costs may be taxed. The list was also expanded to include judgments affirmed in part or modified in those situations where the costs are taxed only as ordered by the appellate court. New language was added to provide that costs are not to be taxed against a party determined indigent in the same proceeding.

Rule 26(c). Language including copies of records authorized by prior Rule 18(f) as taxable costs was deleted consistent with the deletion of that provision as described in the 2019 Reporter's Notes to Rule 18(f).

Rule 26(d). Language indicating that a fee for filing a notice of appeal will be taxed as a cost was deleted. Though the prior language of this Rule tracked the Federal rule, a fee for filing the notice

of appeal does not exist for appeals that will be heard in the Appeals Court or the Supreme Judicial Court. Rather, a fee, if required, is paid upon docketing. The language was updated to reflect this practice. In addition, language was added indicating that certain administrative and convenience fees are recoverable costs, such as credit card convenience fees, fees incurred when electronically filing, and other such costs. This change updates the rule to reflect current costs that may be incurred by a party in prosecuting an appeal.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

Rule 26 is limited to civil cases.

(1973)

Appellate Rule 26, based on F.R.A.P. 39, governs the allowance of costs, and follows prior practice. See G.L. c. 261, § 22. Costs are taxable against the Commonwealth as against an individual. G.L. c. 261, §§ 14, 16. Appellate Rule 26(c), dealing with costs of briefs, enlarges existing practice somewhat, see former G.L. c. 261, § 25; previously a prevailing party could recover only $50 of the cost of printing his brief, unless the court allowed a larger discretionary sum; under Appellate Rule 26(c) the prevailing party recovers the necessary costs of producing the briefs at a rate not higher than such costs generally charged in the Commonwealth.

RULE 27: MOTION FOR RECONSIDERATION OR MODIFICATION OF DECISION

(a) Time for Filing; Content; Action by Court if Granted

Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court

has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present. Oral argument in support of the motion will not be permitted, except by order of the appellate court which decided the appeal. The motion shall be decided by the quorum or panel of the appellate court which decided the appeal.

(b) Form of Motion; Length

Except by permission of the appellate court, a motion shall not exceed either 10 pages of text in monospaced font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).

(c) Response

No response to a motion for reconsideration or modification will be docketed unless requested by the appellate court, but reconsideration will ordinarily not be granted in the absence of such a request. Any response filed pursuant to this provision shall comply with the form and length requirements in Rule 27(b).

(d) Filing and Service

The motion, and any requested response, shall be filed in the office of the clerk of the appellate court that released the decision. In the Supreme Judicial Court, a paper original and 7 copies of the motion shall be filed. In the Appeals Court, the motion shall be filed in electronic form and no paper original or copies are required. Service of the motion, and any requested response, shall comply with Rule 13.

(e) Ruling on Motion

Upon consideration of a motion and any response, the appellate court may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. Action upon a motion is in the discretion of such appellate court, which may award costs, including a reasonable attorney's fee, to the prevailing party.

(f) Notice to Supreme Judicial Court

A party seeking further appellate review shall promptly notify the Supreme Judicial Court of any action taken on the motion.

Rule History

Amended June 7, 1985, effective July 1, 1985; amended January 28, 1986, effective February 1, 1986; amended effective July 1, 1991; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The title of Rule 27 was changed from "petition for rehearing" to "motion for reconsideration or modification of decision." This revision more appropriately describes such filings which rarely, if ever, seek an oral argument and rehearing of a case before the justices and instead typically request a reconsideration or modification of the decision.

The term "rescript" in Rule 27(a) was changed to "decision of the appellate court," consistent with the new definitions in Rule 1(c). This change clarifies that a motion is due 14 days after the date of the decision, making it clear to the parties that it is the decision that triggers commencement of the time period, and not the clerk's issuance of the rescript to the lower court. Language relating to an "answer to a petition," now referred to as a "response," was moved to Rule 27(c) to promote clarity of the related procedures.

Consistent with the revisions to other rules, Rule 27(b) was amended to include the new option for a word count using proportionally spaced font and to clarify that the page limit option follows the monospaced font requirement in Rule 20(a). The first sentence of prior Rule 27(b), concerning the form of a "petition" as a letter addressed to the senior justice was deleted as inapplicable in light of the change to the title and form of these documents.

Rule 27(c) is a new subdivision titled "Response." The language for this subdivision comes from prior Rule 27(a). The word "answer" is no longer used to signify a response to a motion for reconsideration or modification of decision. Lastly, this new subdivision clarifies the formatting requirements applicable to a requested response.

Rule 27(d) is a new subdivision titled, "Filing and Service." Under prior Rule 27(b), litigants sometimes mailed the request directly to the senior justice and/or panel that decided the appeal instead of filing it in the appellate court clerk's office. Adding language about filing and service requirements clarifies the appropriate filing procedures.

Rule 27(e) is a new subdivision titled, "Ruling on Motion." The contents of the subdivision are taken from prior Rule 27(a). Placing this information in its own subdivision increases the readability of the Rules and makes it easier to refer to its requirements.

Rule 27(f), prior Rule 27(c), was revised by striking the first sentence of prior Rule 27(c), which is redundant considering Rule 27(e) now authorizes the appellate court to order review or revision of opinions when a motion is allowed. The language in the remaining sentence is updated for consistency with the revisions made in the preceding subdivisions, e.g., "petition" is changed to "motion." In addition, language regarding notification to the Supreme Judicial Court of any action on the motion is streamlined, and a requirement that this notification be made "promptly" is added.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1991)

[Rule 27(c)] The purpose of these amendments [to Mass. R.A.P. 27(c) and 27.1(b)] is to provide the Supreme Judicial Court with notice of the pendency of and action taken on a petition for rehearing in the Appeals Court when an application for further appellate review has also been filed in the case. On occasion, the Supreme Judicial Court has allowed an application for further appellate review in a case in which the Appeals Court, without the Supreme Judicial Court's knowledge, had already granted a petition for rehearing. Under the amendments, if any party applies for further appellate review by the full Supreme Judicial Court: i) the petitioner shall notify the Supreme Judicial Court of any action taken on the petition for rehearing (Mass. R.A.P. 27(c)); and ii) the application for leave to obtain further appellate review shall contain, inter alia, "whether any party is seeking a rehearing in the Appeals Court" (Mass. R.A.P. 27.1(b)(2)).

(1986)

[Rule 27(a), (b), and (c)] This amendment provides for review of petitions for rehearing by the quorum or panel which decided the appeal. The purpose of the amendment is to conform Rule 27 to the actual practice in the appellate courts.

(1985)

[Rule 27(a)] The change from ten days to fourteen days after the date of the rescript for a petition for rehearing conforms the time period to that found in Fed. R.A.P. 40(a). Such conformity of time periods may aid practitioners.

(1973)

Appellate Rule 27, taken from F.R.A.P. 40, governs petitions for rehearing. It will not change prior practice, under which a petition for rehearing was addressed to the discretion of the court, Merrill v. Beckwith, 168 Mass. 72, 75, 46 N.E. 400, 401 (1897), and ordinarily could not be supported by oral argument, Wall v. Old Colony Trust Company, 177 Mass. 275, 278, 58 N.E. 1015, 1016 (1901).

RULE 27.1: FURTHER APPELLATE REVIEW

(a) Application; When Filed; Grounds

Within 21 days after the date of the decision of the Appeals Court, any party to the appeal may file an application for further appellate review of the case by the Supreme Judicial Court. Such application shall be founded upon substantial reasons affecting the public interest or the interests of justice. Oral argument in support of an application shall not be permitted except by order of the court.

(b) Contents of Application; Form

The application for further appellate review shall contain, in the following order: (1) a request for leave to obtain further appellate review; (2) a statement of prior proceedings in the case (including whether any party is seeking a reconsideration or modification in the Appeals Court); (3) a short statement of facts relevant to the appeal (but facts correctly stated in the decision of the Appeals Court shall not be restated); (4) a statement of the points with respect to which further appellate review of the decision of the Appeals Court is sought; and (5) a brief statement (consisting of not more than either 10 pages of text in monospaced font or 2,000 words in proportional font as defined in Rule 20(a)(4)(B)), including appropriate authorities, indicating why further appellate review is appropriate. A copy of the rescript and decision of the Appeals Court shall be appended to the application. In addition, if the Appeals Court entered a memorandum and order under M.A.C. Rule 23.0 which refers to another document, such as a brief or judge's findings and rulings, a copy of that document, or, if appropriate, the pertinent pages of that document, shall be appended to the application. The application shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).

(c) Response; Form

Within 14 days after the filing of the application, any other party to the appeal may, but need not, file and serve a response thereto (consisting of not more than either 10 pages of text in

monospaced font or 2,000 words of text in proportional font, as defined in Rule 20(a)(4)(B)) setting forth reasons why the application should or should not be granted. The response shall not restate matters described in Rule 27.1(b)(2) and (3) unless the opposing party is dissatisfied with the statement thereof contained in the application. A response shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k). A response may be filed in a different form as permitted by the court.

(d) Filing; Service

One copy of the application and of each response shall be filed in the office of the clerk of the full Supreme Judicial Court. No copy of the application or any response need be filed in the Appeals Court. Filing and service of the application and of any response shall comply with Rule 13.

(e) Vote for Further Appellate Review; Certification

If any 3 justices of the Supreme Judicial Court shall vote for further appellate review for substantial reasons affecting the public interest or the interests of justice, or if a majority of the justices of the Appeals Court or a majority of the justices of the Appeals Court deciding the case shall certify that the public interest or the interests of justice make desirable a further appellate review, an order allowing the application or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court with notice to the lower court. The clerk of the Appeals Court shall forthwith transmit to the clerk of the full Supreme Judicial Court all documents filed in the case.

(f) Briefs

Any party may apply to the Supreme Judicial Court within 14 days after the date on which the appeal is docketed in the full Supreme Judicial Court for permission to file a new brief. If the application is granted, the new brief must be filed in accordance with the briefing schedule established by the clerk of the Supreme Judicial Court, and the court may impose terms as to the length and filing of such brief and any response thereto. If a new brief is filed, it will be considered in lieu of the Appeals Court brief. If permission to file a new brief is denied or not sought, cases in which further appellate review has been granted shall be argued on the briefs filed in the Appeals Court.

(g) Equally Divided Vote on Further Appellate Review

If, following allowance of an application for further appellate review, the justices of the Supreme Judicial Court are equally divided in opinion, unless a majority of the participating justices decides

otherwise, the court shall issue an order noting such equal division, the effect of which shall be the same as if the court had denied the application for further appellate review.

Rule History

Amended effective February 24, 1975; amended effective July 1, 1991; amended effective January 1, 1994; amended effective November 1, 1994; amended effective February 1, 1995; amended effective April 14, 1995; amended October 30, 1997, effective January 1, 1998; amended effective June 1, 2001; amended February 26, 2004, effective April 1, 2004; amended October 31, 2018, effective March 1, 2019; amended July 7, 2021, effective September 1, 2021.

Reporter's Notes

(2021)

A technical amendment was made to Rule 27.1(b) to reflect amendments made to the Appeals Court Rules in 2020. The reference to "Appeals Court Rule 1:28" was deleted and replaced with "M.A.C. Rule 23.0."

(2019)

Rule 27.1(a). The word "rescript" was replaced with "decision" consistent with the new definitions contained in Rule 1(c), and the related amendments made to Rule 23, to clarify the distinction between the clerk's release of a decision to the parties and the clerk's issuance of the rescript to the lower court, (see 2019 Reporter's Notes to Rules 1(c) and 23), and that is the appellate court's release of the decision that commences the timeframe for filing an application for further appellate review. A party has 21 days after the date of the decision of the Appeals Court to file an application for further appellate review in the Supreme Judicial Court. The time period does not commence on the date the Appeals Court issues the rescript to the lower court.

Rules 27.1(a) and (b). References to "an application for leave to obtain further appellate review" were revised to "an application for further appellate review" to simplify the phrase. No substantive change was intended. See G.L. c. 211A, § 11.

Rules 27.1(b) and (c), governing the length requirements of both the application and response, were revised to include the new word count alternative to the page limit, as explained in the 2019 Reporter's Notes to Rule 1.

Rule 27.1(c) was amended to change "opposition" to "response" to more generally describe an answer to an application since not all applications are opposed.

Rule 27.1(d) was revised to reduce the number of copies of an application or response to an application for further appellate review that must be filed from "an original and seventeen copies" to 1 copy and the requirement that a copy need be filed in the Appeals Court was deleted. Fewer copies are required in the Supreme Judicial Court due to advances in paperless practices and no copy is required in the Appeals Court because the Appeals Court receives automatic notification from the Supreme Judicial Court when an application for further appellate review, or a response to an application, is filed, and an electronic copy of the document is automatically shared with the Appeals Court.

Rule 27.1(e). The phrase "upon receipt, further appellate review shall be deemed granted" was removed. According to the prior rule, although the Supreme Judicial Court entered and sent notice of an order granting further appellate review, the application would not be "deemed granted" until the Appeals Court received the order. By deleting this phrase, consistent with all other orders issued by an appellate court, the order is effective upon entry. The rule was also amended to require the Supreme Judicial Court to send notice to the lower court when it grants further appellate review.

The content of prior Rule 27.1(g), governing order of oral argument in cases argued on further appellate review, was removed. The order of argument in a case where further appellate review is granted will be the same as in any other case, with the appellant arguing first. See Rule 22(c)(1). As prior Rule 24.1 (Divided Vote on Further Appellate Review) and Rule 27.1 are closely-related, prior Rule 24.1 was deleted and its content moved to Rule 27.1(g). See 2019 Reporter's Note to Rule 24.1.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(2004)

[Rule 27.1(f)] The 2004 amendment to Appellate Rule 27.1(f) revises the practice of requesting permission to file a separate or supplemental brief in cases where further appellate review in the Supreme Judicial Court has been granted. The parties have the option to rely upon the Appeals Court brief or to request permission (within ten days after the appeal is docketed in the Supreme Judicial Court) to file a new brief in lieu of the Appeals Court brief. Thus, under the revised

procedure, only one brief from each party will be considered by the Supreme Judicial Court. No party may file both the brief from the Appeals Court and a new brief.

(2001)

[Rule 27.1(f)] Where further appellate review has been granted after consideration of a case by the Appeals Court, the case will be reviewed in the Supreme Judicial Court based on the brief that was earlier filed in the Appeals Court. Prior to the 2001 amendment, Appellate Rule 27.1(f) provided that a party may request permission to file a separate or supplemental brief in the Supreme Judicial Court within ten days of the order granting further appellate review. However, time periods regarding service and filing of briefs in the appellate courts are generally measured from the date the appeal is docketed in the appellate court. See, for example, Appellate Rule 11(g).

To maintain consistency, therefore, the clerk's office of the Supreme Judicial Court requested that Appellate Rule 27.1(f) be amended. The amended rule provides that the time period to request permission to file a separate or supplemental brief on further appellate review runs from the date the appeal is docketed in the Supreme Judicial Court.

(1999)

The cover of applications for further appellate review shall be white. See Appellate Rule 20(b), as amended in 1999.

(1997)

[Rule 27.1 (d), effective January 1, 1998] The 1997 amendment to Appellate Rule 27.1(d) increased to seventeen the number of copies of an application for further appellate review and of each opposition to be filed in the clerk's office of the Supreme Judicial Court. The amendment also clarified that an original is to be filed together with the seventeen copies.

(1995)

[Rule 27.1(e)] The 1995 amendment to appellate Rule 27.1(e) makes the rule consistent with the practice of the Supreme Judicial Court which is to vote for further appellate review but not to sign an order concerning such vote.

(1994)

[Rule 27.1(g)] In those cases in which the Appeals Court has reversed or vacated the judgment in the Trial Court and the Supreme Judicial Court has allowed further appellate review, Rule 27.1(g) places the applicant for further appellate review in the position of appellant for the purpose of order of argument. See Rule 22(c). The court by order or the parties by agreement may change the

order of argument. In a case in which both parties apply for further appellate review, order of argument will be controlled by such agreement of the parties or order of the court.

(1991)

[Rule 27.1(b)] The purpose of these amendments [to Mass. R.A.P. 27(c) and 27.1(b)] is to provide the Supreme Judicial Court with notice of the pendency of and action taken on a petition for rehearing in the Appeals Court when an application for further appellate review has also been filed in the case. On occasion, the Supreme Judicial Court has allowed an application for further appellate review in a case in which the Appeals Court, without the Supreme Judicial Court's knowledge, had already granted a petition for rehearing. Under the amendments, if any party applies for further appellate review by the full Supreme Judicial Court: i) the petitioner shall notify the Supreme Judicial Court of any action taken on the petition for rehearing (Mass. R.A.P. 27(c)); and ii) the application for leave to obtain further appellate review shall contain, inter alia, "whether any party is seeking a rehearing in the Appeals Court" (Mass. R.A.P. 27.1(b)(2)).

(1979)

Appellate Rule 27.1 was previously applicable to further appellate review in criminal cases by virtue of Supreme Judicial Court Rule 3:24, § 7 (1975: 366 Mass. 874), except that the words "record appendix" (prepared by the appellant) were taken to mean "record" (assembled by the clerk, former G.L. c. 278, § 33C [St.1974, c. 458, § 1]). That distinction is no longer viable (see Rule 18[a]).

In criminal cases, § 7 of Supreme Judicial Court Rule 3:24 imposes two requirements additional to those of Appellate Rule 27.1. Subdivision 27.1(d) calls for copies of an application for further appellate review and any opposition to be filed with the clerks of the Appeals and Supreme Judicial Courts; Rule 3:24, § 7 further mandates that a copy of the application is to be served on the clerk of the trial court the action of which is on appeal. Subdivision 27.1(e) provides for notice to the clerk of the lower court by the clerk of the Appeals Court when an application for further appellate review is granted; Rule 3:24, § 7 further requires such notice in criminal cases if an application is denied.

(1975)

As originally promulgated, a party desiring further appellate review had 10 days from the date of rescript to file an appropriate application. Because, in practice, this period did not suffice, it has been enlarged to 20 days. In addition, an amendment to Appellate Rule 27.1(f) allows a party who so desires to apply to the Supreme Judicial Court for leave to file a brief different from or supplementary to his brief in the Appeals Court. As originally promulgated, Rule 27.1(f) did not make clear that the party had a right to lodge such a request. However, absent leave of court,

whether because the court denies the application or because the party fails to file it initially, the case will be argued on the Appeals Court papers.

(1973)

G.L. c. 211A, § 11 permits the Supreme Judicial Court, for substantial reasons of justice or the public interest, to review cases determined in the Appeals Court, provided three justices of the Supreme Judicial Court so order, or a majority of the Appeals Court or a majority of the Appeals Court panel deciding the case certify the desirability of further review. Appellate Rule 27.1 regulates the application for such review.

Further review is analogous to the granting of certiorari by the Supreme Court of the United States. Applications for such review will not ordinarily entail oral argument; and if granted, review will usually be argued on the briefs and record appendix filed in the Appeals Court.

RULE 28: PROCEDURE IN LOWER COURT FOLLOWING RESCRIPT

(a) Civil Cases

In a civil case, when the rescript from the appellate court sets forth the text of the judgment to be entered, the clerk of the lower court shall, upon receipt of the rescript, prepare, sign, and enter the judgment which has been ordered. If the rescript orders settlement of the form of the judgment in the lower court, the clerk of the lower court shall sign and enter the judgment after settlement. Notation of a judgment in the lower court docket constitutes entry of the judgment.

(b) Criminal Cases

If the rescript has the effect of entitling the defendant to immediate release from custody, counsel for the defendant, the Commonwealth, and the clerk of the lower court shall immediately take any action necessary to ensure that the defendant is released from custody forthwith. In all other criminal cases, unless the rescript affirms the lower court, the clerk of the lower court shall, upon receipt of the rescript, schedule a hearing forthwith to be held no later than 30 days from the clerk's entry of the rescript.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

The title of Rule 28 was revised to "Procedure in Lower Court Following Rescript," to clarify the content and applicability of the rule. The parenthetical indicating that Rule 28 applies only to civil cases was deleted because the rule, as amended, also applies to criminal cases.

Rule 28 was separated into two subdivisions, one concerning civil cases and the other concerning criminal cases. The prior language, found in Rule 28(a), encompasses the procedure in civil cases. Rule 28(b) was added to govern the procedure in criminal cases. The language requires action when the rescript reverses or remands a case to the lower court, to ensure a timely hearing is scheduled for further proceedings.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

Rule 28 is limited in applicability to civil cases. The existing practice in criminal cases, to be continued under the Rules, is to enter the rescript on the docket rather than to prepare a separate "judgment" as is done in civil cases.

(1973)

Appellate Rule 28 prescribes the duties of the lower court clerk upon receipt of the appellate court rescript. It should always be remembered that it is the judgment of the lower court, not the rescript (however much the terms of the rescript may shape the final judgment), which regulates the nature and quantum of any relief obtained. Until that judgment has been made to conform to the rescript, the litigation is not terminated. The rescript may dictate the text of the judgment or it may enjoin the parties to "settle," i.e., jointly work out a draft of a judgment to be approved by the appellate court before transmission to the lower court clerk for entry.

RULE 29: VOLUNTARY DISMISSAL OF APPEAL OR OTHER PROCEEDING

(a) Voluntary Dismissal in the Lower Court

Before an appeal has been docketed in the appellate court, the lower court may dismiss the appeal on the filing of a stipulation signed by all the parties or on the appellant's motion with notice to all parties.

(b) Voluntary Dismissal in the Appellate Court

(1) Civil Cases

If the parties to a civil appeal or other civil proceeding shall sign and file with the clerk of the appellate court a stipulation or motion that the proceeding be dismissed with prejudice, specifying the terms as to payment of costs and attorney's fees, and shall pay whatever fees are due, the clerk shall enter the case as dismissed. An appeal may be dismissed on motion of the appellant on such terms as may be agreed upon by the parties or fixed by the court.

(2) Criminal Cases

A criminal appeal or other criminal proceeding may be dismissed by the appellate court on motion of the appellant, and the clerk shall enter the case as dismissed. If the appellant is the defendant, the motion shall include an affidavit by the defendant, or an attestation by counsel, that the defendant assents to the court's dismissal of the appeal with prejudice. If the motion states that the appeal is moot, an affidavit by the defendant is not required.

(c) Settlement; Obligation of Appellant

In the event a case is settled or otherwise disposed of while an appeal is pending, it shall be the duty of the appellant to notify the clerk of the appellate court forthwith.

(d) Notice to Lower Court

The clerk of the appellate court shall promptly notify the clerk of the lower court whenever an appeal is dismissed pursuant to this rule.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 29(a) was revised to improve clarity. No substantive change was intended.

Rule 29(b). The title of this subdivision was amended to include the word "voluntary" to more accurately reflect the substance of the subdivision. Rule 29(b) was divided into two separate paragraphs, one addressing voluntary dismissal in civil cases and another addressing voluntary dismissal in criminal cases, because the processes differ. Rule 29(b)(2) provides that although a criminal appeal or other proceeding may be voluntarily dismissed, if the appellant is the defendant, an affidavit by the defendant or an attestation by counsel is required stating that the defendant assents to the dismissal of the appeal with prejudice. This language is consistent with existing practice.

Rule 29(d) is a new subdivision that requires the appellate court clerk to notify promptly the lower court when an appeal is dismissed pursuant to Rule 29. Under prior Rule 29(b), such a requirement was only applicable in a criminal case.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1979)

[Rule 29(b)] Rule 29 is changed only in that paragraph (b) of Rule 29, governing dismissal of an appeal in the appellate court, now provides for notification of the clerk of the lower court by the clerk of the appellate court whenever an appeal in a criminal case is dismissed in the appellate court.

(1973)

Appellate Rule 29, based on F.R.A.P. 42, is a housekeeping measure regulating voluntary dismissal of appeals and the settlement of cases. Appellate Rule 29(c) is designed to ensure that the court is kept informed of any out-of-court disposition.

RULE 30: SUBSTITUTION OF PARTIES IN CIVIL CASES

This rule applies only to civil cases.

(a) Death of a Party

If a party dies after a notice of appeal is filed in the lower court or while a proceeding is pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appropriate court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 13. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate court or a single justice may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the lower court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the appeal is docketed, substitution shall be effected in the appellate court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party's personal representative, or, if the party has no personal representative, by the party's attorney of record within the time prescribed by these rules. After the appeal is docketed, substitution shall be effected in the appellate court in accordance with this subdivision.

(b) Substitution for Other Causes

If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 30(a).

(c) Public Officers; Death or Separation from Office

(1)

When a public officer is a party to an appeal or other proceeding in an appellate court in the public officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office,

the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2)

When a public officer is a party to an appeal or other proceeding in the public officer's official capacity, the public officer may be described as a party by official title rather than by name; but the court may require the public officer's name to be added.

Rule History

Amended May 15, 1979, effective July 1, 1979; amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 30 was amended by striking a free-standing parenthetical subtitle ("Applicable to Civil Cases"), and adding "in Civil Cases" to the title of the rule. The amendment was made to clarify the content and applicability of the rule and to eliminate a drafting technique unique to only a few prior rules that may have led to confusion.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1973)

Appellate Rule 30 governs the substitution of a party, whether because of death or for some other cause, and also regulates the substitution of public officers. It is based on F.R.A.P. 43; see also Mass. R. Civ. P. 25.

RULE 31: DUTIES OF CLERKS

(a) General Provisions

The Supreme Judicial Court and the Appeals Court shall be deemed always open for the purpose of filing any proper document, of issuing and returning process, and of making motions and orders. The office of the clerk with a clerk in attendance shall be open during regular court business hours on all weekdays except State and Federal holidays recognized by the Commonwealth.

(b) The Docket; Calendar; Other Records Required

(1)

The clerk shall keep an electronic docket, in such form and style as may be prescribed by the appellate court, and shall enter therein each case. Cases shall be assigned consecutive docket numbers. All filings, orders, decisions, and rescripts shall be entered chronologically on the docket. Entries shall show the nature of each filing, order, decision, or rescript.

(2)

The clerk shall prepare, under the direction of the appellate court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to appeals in child welfare and criminal cases, and to appeals and other proceedings entitled to preference by law.

(3)

The clerk shall keep such other records as may be required from time to time by law or by the appellate court.

(c) Notice of Orders, Decisions, or Rescripts

Upon the entry of an order, decision, or rescript, including an order on an application for direct or further appellate review, the clerk of the appellate court shall send a notice of entry to each party, and include a copy of or a link to any decision and rescript. The clerk shall send such notice to the electronic business address of an attorney that is registered with the Board of Bar Overseers, and may send paper notice by conventional mail. The clerk shall send such notice to the mailing or electronic address of a self-represented party, depending upon such party's address preference as registered with the clerk.

(d) Custody of Records and Documents

The clerk shall have custody of the records and documents of the appellate court. The clerk shall not permit any original record or document to be taken from the clerk's custody except as authorized by the orders or instructions of the court or a single justice. Original documents transmitted as the record on appeal or review shall be returned to the lower court.

Rule History

Amended October 31, 2018, effective March 1, 2019.

Reporter's Notes

(2019)

Rule 31(a). The first two sentences of the prior rule were deleted as unnecessary because the clerk's oath and bond requirements are established by statute (G.L. c. 221, § 12) and the prohibition on practicing law has been superseded by S.J.C. Rule 3:02 and S.J.C. Rule 3:12, Canon 3. The provisions regarding specific business hours of court (weekdays and holidays) were removed because they are outside the scope of the Rules of Appellate Procedure.

Rule 31(b) was separated into three paragraphs for clarity, and the language updated for consistency, with current practices and the revisions to the definitions in Rule 1(c). Consistent with the appellate courts' longstanding practices, the revised rule includes child welfare cases as proceedings to be given preference by the clerk when scheduling cases for argument. Criminal cases and other proceedings are entitled to preference by law. See G.L. c. 211, § 7 and G.L. c. 211A, § 13.

Rule 31(c). The title of this rule was amended to include "decision" given its addition in 2019 to Rule 1(c). Language was added authorizing the clerk to send notices to an attorney's electronic business address registered with the Board of Bar Overseers, and providing that paper notice by conventional mail may be sent. In addition, the clerk is authorized to send electronic or paper notice to self-represented parties, depending upon such party's preference as registered with the clerk.

Rule 31(d). In the last sentence, the phrases "upon the disposition of the case" and "from which they were received" were deleted. The first phrase was deleted because it is current practice to return original documents transmitted to an appellate court back to the lower court when review of the case is completed; the clerk does not presently wait for disposition of the case before doing

so. The second phrase was deleted as unnecessary; the clerk of the appellate court only returns original documents to the lower court which had transmitted the records.

Further organizational and stylistic revisions were made to this rule in 2019 in accordance with a global review and revision of all of the Appellate Rules. These revisions are described in the 2019 Reporter's Notes to Rule 1.

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections I. and II.

(1984)

Under the provisions of Mass. R. A. P. 31 (d), transcripts filed in the appellate court need not be returned to the lower court. For this purpose, transcripts are not part of the "original papers." See Mass. R. A. P. 8 (a), which lists "original papers" as distinct from "the transcript of proceedings."

(1979)

The duties of clerks set out in this Rule have been applicable to criminal appellate procedure since the effective dates of Appeals Court Rule 1:27 (February 27, 1975: 3 Mass. App. Ct. 805) and Supreme Judicial Court Rule 1:27 (January 1, 1975: 366 Mass. 862).

(1973)

Appellate Rule 31, based on F.R.A.P. 45, outlines the duties and responsibilities of the clerk and his assistants. Note that although the clerk's office is open only during normal business hours, the court is deemed open at all times for purposes of filing motions, papers, and the like. See also Mass. R. Civ. P. 77.

RULE 32: TITLE

These rules may be known and cited as the Massachusetts Rules of Appellate Procedure.

Reporter's Notes

(1973)

The formal title of the Appellate Rules is "Massachusetts Rules of Appellate Procedure." They may be cited "Mass.R.A.P.

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