

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on
the 31st day of October, in the year of two thousand and eighteen:
present,

<u>RALPH D. GANTS</u>)	Chief Justice
)	
<u>BARBARA A. LENK</u>)	
)	
<u>FRANK M. GAZIANO</u>)	Justices
)	
<u>DAVID A. LOWY</u>)	
)	
<u>KIMBERLY S. BUDD</u>)	
)	
<u>ELSPETH B. CYPHER</u>)	
)	
<u>SCOTT L. KAFKER</u>)	

ORDERED: That the Massachusetts Rules of Appellate Procedure adopted by order
dated July 1, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rules 1 through 31

By striking out Rules 1 through 31 and inserting
in lieu thereof the new Rules 1 through 31 attached hereto.

The amendments accomplished by this order shall take effect on March 1, 2019 and shall govern procedures in appeals to an appellate court then pending and commenced on and after that date.

RALPH D. GANTS)
) Chief Justice
)
BARBARA A. LENK)
)
)
FRANK M. GAZIANO)
) Justices
)
)
DAVID A. LOWY)
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SCOTT L. KAFKER)

MASSACHUSETTS RULES OF APPELLATE PROCEDURE

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 reported to the appellate division.

“decision” means, when referring to an appellate court, the court’s written opinion, memorandum and order pursuant to Appeals Court Rule 1:28, 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 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 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) Content of the Notice of Appeal, Generally. The notice of appeal shall specify the party or parties taking the appeal and shall, in civil cases, designate the judgment, decree, adjudication, order, or part thereof appealed from.

(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.

(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 4. Appeal—When Taken

(a) Appeals in Civil Cases.

(1) 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 within 30 days of the date of the entry of the judgment, decree, appealable order, or adjudication appealed from; but 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 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. 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. 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 the time otherwise prescribed by this rule, whichever period last expires.

(2) 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:

(A) for judgment under Rule 50(b);

(B) 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;

(C) 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

(D) under Rule 59 for a new trial.

(3) A notice of appeal filed before the disposition of any timely motion listed in Rule 4(a)(2) shall have no effect. A new notice of appeal must be filed within the prescribed time 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) The running of the time for filing a notice of appeal shall be terminated as to the moving party by a motion for a new trial pursuant to Massachusetts Rules of Criminal Procedure 25(b)(2) and 30 filed in the lower court within 30 days after the verdict or finding of guilt or within 30 days after imposition of sentence, and the full time fixed by this rule shall commence to run and shall be computed from the date of entry of an order denying such motion.

(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) for another party to file a notice of appeal runs from the date when the lower court enters the first notice.

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 6. Stay or Injunction Pending Appeal

(a) Civil Cases.

(1) Stay Must Ordinarily Be Sought in the First Instance in Lower Court; Motion for Stay in Appellate Court. In civil cases, an application for a stay of the judgment or order of a lower court pending appeal, or for approval of a bond under Rule 6 (a)(2), or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the lower court. A motion for such relief may be made to the appellate court or to a single justice, but the motion shall show that application to the lower court for the relief sought is not practicable, or that the lower court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the lower court for its action. The motion shall also 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. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the appellate court to which the appeal is being taken. If the court is the Supreme Judicial Court, the motion shall be filed with the clerk of the Supreme Judicial Court for Suffolk County.

(2) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties.

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 1 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.

(3) 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.

(b) Criminal Cases. A motion for a stay of execution of a sentence shall be governed by Rule 6(b) and by Massachusetts Rule of Criminal Procedure 31.

(1) Stay Must Ordinarily Be Sought in the First Instance in Lower Court; Motion for Stay in Appellate Court. In criminal cases, an application for a stay of execution of a sentence pending appeal must ordinarily be made in the first instance in the lower court. A motion for such relief may be made to the single justice of the appellate court to which the appeal is being taken, but the motion shall show that application to the lower court for the relief sought is not practicable, or that the lower court has previously denied an application for a stay or has failed to afford the relief which the applicant requested with the reasons given by the lower court for its action. The motion shall also 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. With the motion shall be filed such parts of the record as are relevant. The motion shall be filed with the clerk of the appellate court to which the appeal is being taken. If the court is the Supreme Judicial Court, the motion shall be filed with the clerk of the Supreme Judicial Court for Suffolk County.

(2) Reasonable Notice. Reasonable notice of the motion for a stay shall be given to the Commonwealth.

(A) 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.

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

(i) 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

(ii) if the motion is filed at any other time, the Commonwealth shall have 30 days to respond.

(C) A single justice may shorten or extend the time for responding to any motion authorized by this rule.

(3) Appealability of Single Justice Order; Finality. An order by the single justice allowing or denying an application for a stay may be appealed to the appellate court in which the appeal is pending. An order by the appellate court in which the appeal is pending, allowing or denying an application for a stay, shall be final.

(4) Revocation of Stay Pending Appeal. 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.

(5) Expiration of Stay. 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.

(6) Notice of Expiration of Stay. 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.

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 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 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); 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 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 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 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 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 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 docketed 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, 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, 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 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 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 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), 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 one 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 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 or (2) when solicited by the appellate court, except that leave shall not be required when the brief is presented by the Commonwealth or its officer or agency. 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 indicate 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) unless the brief is presented by the Commonwealth or its officer or agency, a declaration that indicates 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 contributed money that was intended to fund preparing or submitting the brief;

(C) a person or entity—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifying each such person or entity; and

(D) 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)(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 18. Appendix to the Briefs: Contents, Cost, Filing, and Service

(a) Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies. 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) The court may decline to permit the parties to refer to portions of the record omitted from the appendix, but the fact that parts of the record are not included in the appendix shall not prevent the court from relying on such parts.

(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.

(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 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 the Appeals Court Standing Order Concerning Electronic Filing, on appeal to the Appeals Court, 4 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.

(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 the Appeals Court Standing Order Concerning Electronic Filing, on appeal to the Appeals Court, 2 copies 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 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. 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.

(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, 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, 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, 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), 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), 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 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 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(1), 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 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 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 24.1

[delete]

Rule 25. Damages for Frivolous Appeal in Civil Cases

If an appellate court determines that an appeal in a civil case is frivolous, it may award just damages and single or double costs to the appellee, and such interest on the amount of the judgment as may be allowed by law. The appellate court shall calculate the amount of any award after a separately filed motion or notice from the court and reasonable opportunity to respond.

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 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 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 Appeals Court Rule 1:28 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 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 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 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 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.