

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and
for said Commonwealth on the second day of March, in the year
two thousand and twenty-three:

present,

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
)	
<u>DAVID A. LOWY</u>)	
)	
)	
<u>ELSPETH B. CYPHER</u>)	
)	
)	
<u>SCOTT L. KAFKER</u>)	
)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
)	
<u>SERGE GEORGES, JR.</u>)	

ORDERED: That the Massachusetts Rules of Appellate Procedure,
as amended by order effective March 1, 2019, are
hereby amended as follows:

Rule 18 By deleting Mass. R. A. P. 18 (a) (1) (D) and
inserting in lieu thereof the following Mass. R. A. P.
18 (a) (1) (D):

(D) Parties must include in the appendix all portions
of the record that are relied upon in the brief or
that relate to an issue on appeal, except portions of
the record subject to a motion for transmission
pursuant to Rule 18 (a) (1) (G). The appellate court
may decline to permit the parties to refer to portions
of the record omitted from the appendix unless a
motion for transmission of those portions of the

record is filed in the appellate court. The fact that portions of the record are not included in the appendix or subject to a motion for transmission shall not prevent the appellate court from relying on such portions of the record.

Rule 18 By inserting after Mass. R. A. P. 18 (a) (1) (F) the following Mass. R. A. P. 18 (a) (1) (G):

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

The amendments accomplished by this order shall take effect on May 1, 2023.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
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<u>DAVID A. LOWY</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
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)	
<u>SERGE GEORGES, JR.</u>)	

REPORTER'S NOTES

MASSACHUSETTS RULES OF APPELLATE PROCEDURE

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

Reporter's Notes—2023

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

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

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