REPORTER'S NOTES TO THE 2019 AMENDMENTS TO THE MASSACHUSETTS RULES OF APPELLATE PROCEDURE

Rule 1. Reporter's Notes--2019

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

I. Overview.

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

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

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

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

The subcommittee also compared the relevant Federal Rules of Appellate Procedure, aware of both the differences between the Massachusetts and Federal courts and case types, and of the recent Federal "restyling" amendments designed to make those rules more comprehensible. While the subcommittee followed the spirit of the Federal restyling amendments, the subcommittee concluded the preferable route in most instances would be to maintain the existing Massachusetts Rules' language, style, and procedures instead of proposing

a wholesale adoption of the current Federal rules. However, in certain situations the subcommittee derived amendments from adopted Federal language. See, e.g., Rules 4(d) and 13(a)(2) (timeliness of filings by a self-represented party confined in an institution); Rules 20(a)(2) and (a)(3) (word count alternative to page limitation for briefs).

The subcommittee's proposals were endorsed by the Supreme Judicial Court Standing Advisory Committee on the Rules of Civil and Appellate Procedure, and by the Standing Advisory Committee on the Rules of Criminal Procedure. In 2018, the Supreme Judicial Court approved the amendments and identified their effective date.

II. Global Amendments.

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

(1) Gender Neutrality. Masculine gender pronouns were removed in favor of gender-neutral phrases.

(2) Provisions Rendered Obsolete by Technology. The amendments removed certain provisions that had become obsolete because of technological developments and work processes.

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

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

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

20(a)(2)(F), 20(a)(3)(G) and 16(k). The Federal rules likewise require a certificate of compliance for word count. See Fed. R. App. P. 32(a)(7)(C).

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

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

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

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

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

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

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

(7) Changing Deadlines to Increments of 7 Days. Many filing deadlines in the Rules were revised to be in increments of 7. Most 10-day deadlines were converted to 14-day deadlines, and all 20-day deadlines to 21-day deadlines. Because a court's action is often the event that triggers a deadline, changing the deadlines to increments of 7 will guarantee that the final day falls on a weekday. For example, if the Appeals Court releases a decision on a Tuesday, the final day for filing an application for further appellate review is certain to fall 21 days later on the third following Tuesday. See Rules 23(a) and 27.1(a). This clarifies filing dates for parties and makes processing filings easier in the appellate courts. The change also significantly decreases the likelihood that a deadline will fall on a non-business day, which causes confusion to litigants who are not aware that such a deadline is extended to the next business day. See Rule 14(a). Deadlines in increments of 30 or 40 days are unchanged because those are well established and traditionally referenced time periods that are not as affected by weekends as the shorter time periods referenced above.

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

(9) Changing "Opposition" to "Response." All references to "opposition" are amended to "response" to reflect that, depending on the particular circumstances of a case or motion, the nonmoving party may want to respond to the moving party's request, but not necessarily oppose that request. Parties remain free to caption a response as an "opposition" if they so desire.

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

III. Amendments to Rule 1.

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

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

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

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

Rule 1(b). The second sentence of this subdivision was deleted as unnecessary in light of the broad language of the first sentence. An appeal from a decision of a single justice of the Supreme Judicial Court must be to the Supreme Judicial Court, but other proceedings related to such an appeal may not be. See Pixley v. Commonwealth, 453 Mass. 827 (2009) (describing subsequent proceedings related to the appeal to take place in the Appeals Court); Commonwealth v. Pixley, 77 Mass. App. Ct. 624 (2010) (related proceedings in the Appeals Court).

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

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

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

"Decision": A definition of "decision" was added to distinguish between the appellate court's written opinion, memorandum and order pursuant to Rule 1:28, or other final adjudicative order in the case (the decision), and the "rescript," which is the appellate court's order, direction, or mandate disposing of the appeal. The prior rules' use of "rescript" caused some confusion for parties as to when to begin calculating the time to file a petition for rehearing and an application for further appellate review. In accordance with this definition, the word

"rescript" was replaced with "decision" in Rules 27(a), 27.1(a) and 27.1(b), as well as in Rules 23(a), 23(b), and 31(c).

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

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

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

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

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

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

"Transmission" or "transmit": A new definition was added to clarify that these words allow for the sending or conveying of documents or court records using a method authorized by

the court. The definition provides a non-exhaustive list of current methods of transmission used by the courts and is intended to allow for future methods as new technologies are adopted by the courts.

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

Rule 2. Reporter's Notes--2019

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

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

Rule 3. Reporter's Notes--2019

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

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

Rule 3(c) was reformatted to clarify the required content of a notice of appeal. Rule 3(c)(1) applies "generally" to civil and criminal cases and Rule 3(c)(2) applies to child welfare cases. Because the requirements related to a notice of appeal in a child welfare case are different, a separate paragraph addressing those particular requirements clarifies the rule. Regarding the signing of the notice of appeal in a child welfare case where the appellant is not a minor, the reference is amended from "party or parties taking the appeal," to "person or persons, or by counsel for the entity, taking the appeal," to be consistent with the new definition of "party" in Rule 1(c), and because the term "person" ordinarily does not apply to government entities, such as the Department of Children and Families, which may take appeals in child welfare cases and which can act only through counsel.

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

Rule 3(e), governing the change of counsel on appeal in criminal and certain non-criminal cases, was amended to change the procedure for counsel to withdraw an appearance upon the filing of a notice of appeal in the common situation that the Committee for Public Counsel Services (CPCS) assigns substitute counsel to handle a party's appeal. The prior procedure required the defendant's counsel to file a motion to withdraw that required action by the trial court before notice was made to CPCS to provide appellate representation. The new

procedure requires the defendant's counsel with an appearance in the trial court to notify CPCS no later than the day on which the notice of appeal is to be filed that appellate counsel should be assigned. CPCS will then assign appellate counsel, who is required to file a prompt notice of appearance in the trial court. After the appellate attorney has entered the appearance, the prior counsel of record in the trial court may file a notice of withdrawal.

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

The addition of Rule 3(f)(4) is intended to clarify that counsel listed as active on the lower court docket at the time the lower court issues the notice of assembly per Rule 9 will be listed as active counsel on the docket of the appellate court, and encourage such counsel to file a prompt notice of withdrawal in the lower court. This is consistent with Mass. R. Civ. P. 11(d) and Mass. R. Prof. C. 1.16(c). Rule 3(f)(4) also clarifies that, after an appeal is docketed in an appellate court, a motion to withdraw must be filed in the appellate court, not the lower court. The inclusion of this longstanding practice into the Rules will reduce confusion on the part of attorneys as to why their appearance was entered on the appellate court docket in circumstances where the attorney was retained or assigned as lower court counsel only, and clarifies that a motion to withdraw appearance should be filed in the appellate court once that court has jurisdiction of a case. See Rule 10(d).

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

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

Rule 4. Reporter's Notes--2019

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

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

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

The word "filed" is retained in Rule 4(a)(2) to clarify that, regardless of the language used in the applicable Massachusetts Rules of Civil Procedure, the post-judgment motion must actually be filed with the lower court to toll the time period to file a notice of appeal. This phrasing is intended to address the situation where a party serves a post-judgment motion in compliance with a lower court standing order or rule, such as Superior Court Rule 9A, but then

never files the motion with the lower court. In that situation, the time period to file a notice of appeal is not tolled because the motion was only served and not filed. Finally, the last clause of the prior sentence was relocated and revised slightly to clarify that the time for filing a notice of appeal for all parties begins on the date when the lower court enters the order disposing of the last remaining motion enumerated in the rule.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 4(d) provides that the notice of appeal is to be deemed filed on the date the document is deposited for mailing in the institution's internal mailing system. The subdivision requires a party to show timely filing by including a certificate in compliance with Rule 13(a)(1)(B). This certificate creates a presumption of timely filing. However, not including this certificate will not itself render the notice of appeal invalid or untimely because Rule 4(d) permits the lower court to allow later filing of the certificate. Unlike Fed. R. App. P. 4(c)(1)(A), this subdivision requires only that the party's certificate set forth the date of deposit, and does not include the further requirement that the party also state that first-class postage has been prepaid because some Massachusetts institutions affix postage after the item leaves the inmate or civilly committed person's hands.

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

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

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

Rule 5. Reporter's Notes--2019

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

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

Rule 6. Reporter's Notes--2019

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

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

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

Rule 7. Reporter's Notes--2019

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

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

Rule 8. Reporter's Notes--2019

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

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

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

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

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

Rule 8(b)(1)(C) governs the cost of producing the transcript. The Commonwealth is responsible for paying for the transcript for the lower court in all criminal cases and in civil cases in which the appellant was entitled to appointed counsel. In other cases, the appellant is required to pay for the transcript for the lower court for all proceedings relevant to the appeal, regardless

of whether the appellant or the appellee ordered them. The lower court may settle any dispute over whether transcripts ordered by the appellee are relevant to the appeal and has the authority to shift costs in the interests of justice. Payment of costs for the copies of the transcripts to be provided to the parties is determined by the Chief Justice of the Trial Court in an Administrative Order because it concerns contracts between the Trial Court and transcribers and court reporters, and will be influenced by the expansion of electronic processes.

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

Rule 8(b)(3) clarifies that, in all cases, the transcriber must deliver the transcript directly to the lower court clerk, rather than providing it to the ordering party for delivery to the clerk. This clarification is intended to avoid unnecessary delays. The mechanics of such delivery is governed by an Administrative Order published by the Chief Justice of the Trial Court, which is intended to allow the Trial Court to take immediate advantage of advances in technology regarding electronic delivery. The lower court clerk has the duty of informing all parties when all transcripts have been received. Of course, a clerk may also inform parties when transcripts of some, but not all, proceedings are received.

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

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

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

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

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

Rule 9. Reporter's Notes--2019

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

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

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

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

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

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

the appellate court, the clerk of the lower court is required to transmit the transcript or certification. This paragraph was added to facilitate consideration of the appeal by the appellate court because the lower court's assembly of the record on appeal from a motion for post-conviction relief does not include the transcript of the underlying trial, which the appellate court needs to determine the subsequent appeal.

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

Rule 9(e)(2) identifies the documents that must be transmitted by the lower court clerk to the appellate court with the notice of assembly. The documents include a completed appellate court entry statement, a copy of the notice of assembly sent to the parties, a copy of the notice(s) of appeal, any notice of impounded information, and an exhibit list. The requirement that two "certified" copies of the docket entries be transmitted was reduced to one copy, which need not be certified. Removing the requirement that the lower court docket be certified recognizes that it can be presumed that the docket is authentic because it is transmitted directly from the lower court, facilitates transmission of the notice of assembly and accompanying documents to the appellate court, and is consistent with the requirements in Rule 18 (the copy of the docket included in the appendix need not be certified). Moreover, any incorrect docket entry transmitted to the appellate court can be corrected pursuant to the procedures in Rule 8(e). Removing this requirement eliminates the need for manual certification of the docket which consumes the time and effort of lower court personnel. In criminal cases, the prior requirement that an original and one copy of the transcript be transmitted was revised to a single electronically-formatted transcript. These amendments reflect current practice regarding the information required by the appellate courts from the lower court for entry of an appeal.

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

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

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

Rule 10. Reporter's Notes--2019

Rule 10(a)(1)(A) contains the entirety of prior Rule 10(a)(1) and was amended to expand the time period to docket the appeal from 10 to 14 days. The subparagraph was also amended to specify that when the lower court has authorized the appellant to proceed on appeal without payment of fees, the docketing of the appeal in the appellate court will proceed upon the "written request" of the appellant. This amendment clarifies that verbal requests to docket the appeal are not permitted.

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

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

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

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

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

Rule 10(a)(6) is a new paragraph that addresses joint appeals. Pursuant to prior Rule 3(b), parties with similar interests could file a joint notice of appeal in the lower court or could join in an appeal after filing separate notices of appeal and then proceed on appeal as a single

appellant, but still needed to enter their cases separately in the appellate court. This caused confusion for parties who sought to pay one docketing fee on behalf of all parties who have joined in an appeal. Rule 10(a)(6) clarifies that, when an appeal is docketed in the appellate court and the parties file a joint notice of appeal, they shall automatically proceed as a single appellant without leave of court. If the parties' interests are aligned, judicial economy and efficiency are advanced by having them proceed in the appellate court as a single appellant.

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

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

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

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

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

Rule 11. Reporter's Notes--2019

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

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

Rule 11(f) was revised to align the rule with court practices. According to the prior rule, although the Supreme Judicial Court entered and sent notice of an order granting direct appellate review, the order would not actually be "deemed granted" until the Appeals Court received it. The amendments to this rule delete the phrase "upon receipt, direct appellate review shall be deemed granted" to clarify that the order is effective upon its entry. Rule 11(f) was also amended to substitute the Supreme Judicial Court in place of the Appeals Court as the court sending notice to the lower court when direct appellate review is granted.

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

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

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

Rule 11.1. Reporter's Notes--2019

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

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

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

Rule 12. Reporter's Notes--2019

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

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

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

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

Rule 13. Reporter's Notes--2019

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

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

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

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

Rules 13(d) and 13(e) are substantially revised subdivisions that detail the requirement for, and contents of, a certificate of service. Rule 13(d) governs all documents other than briefs and appendices, which are governed by Rule 13(e). Under both subdivisions, a party must

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

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

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

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

Rule 14. Reporter's Notes--2019

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

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

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

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

Rule 15. Reporter's Notes--2019

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

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

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

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

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

Rule 16. Reporter's Notes--2019

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

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

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

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

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

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

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

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

pages in the body of the brief where each argument is presented. See also Fed. R. App. P. 28(a)(7).

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

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

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

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

Rule 16(a)(13) specifies the contents of the addendum to a principal brief. It contains substantially revised text relocated from prior Rules 16(a)(6) and 16(a)(7). The amendment was intended to consolidate into a single provision the various items required to be included in an addendum. Rule 16(a)(13)(A) requires the addendum to include a table of contents listing each item contained in the addendum and the page number on which the document begins. Rule 16(a)(13)(B) continues the requirement of prior Rule 16(a)(6) that a copy of any memorandum of decision or findings of the lower court be included in the addendum. The provision was expanded to require that when the addendum includes a document bearing a handwritten endorsement by the lower court, the addendum also include a typed copy of that endorsement. A lower court judge will often endorse a motion or other paper with a handwritten notation that is

difficult to decipher. Requiring both a copy of the original endorsement and a typed version facilitates review in the appellate court. If the lower court clerk provides a typed notice of docket entry containing the full text of the judge's order, a copy of the notice would suffice for purposes of this rule.

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

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

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

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

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

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

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

Rule 16(g), regarding Massachusetts citations, was amended to remove language referencing old volumes of the Massachusetts Reports, since those are not as commonly cited today. The language was revised to state more simply that citations to Massachusetts authorities need to be to the official reporter of the decision or the official publication containing the statute or regulation, if an official report or publication exists. Language related to quotations of statutory material and citation examples were also relocated to these Reporter's Notes. Examples of citations to Massachusetts authorities are as follows:

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

Citations to these and other authorities should be made consistent with the Supreme Judicial Court Style Manual, available at http://www.mass.gov/courts/docs/sjc/docs/reporter-of-decisions-style-guide.pdf.

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

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

Rule 16(j) was amended to cross-reference Rule 10(a)(5) concerning consolidated appeals. The specific reference to Rule 10(a)(5) clarifies the phrase "cases consolidated for purposes of the appeal." The rule was revised and separated into three paragraphs. The rule continues to authorize parties to join in another party's brief in the same case. The rule was revised to clarify that reply briefs can be joined in the same manner as principal briefs. In addition, a clause requiring notice to the clerk and other parties was added. The notice informs the clerk to designate that party as having joined another party's brief and alerts the other parties that a separate brief will not be filed. Finally, a new provision, encompassed in Rule 16(j)(3), codifies existing practice that, except with leave of the appellate court or a single justice, in cases involving more than one appellant or appellee, an appellee may file only a single brief regardless of the number of appellant briefs that are filed, and an appellant may file only a single reply brief regardless of the number of appellee briefs that are filed.

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

Rule 16(l) was amended to remove the phrase "with a copy to all counsel" and add the sentence, "Filing and service of any letter pursuant to this paragraph shall comply with Rule 13." Parties often neglect to adhere to the service requirements of Rule 13 when filing letters

submitted pursuant to Rule 16(l). An express reference to that rule will increase compliance with these requirements and clarify that service requirements apply to such letters.

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

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

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

Rule 17. Reporter's Notes--2019

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

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

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

Rule 17(c) is a new subdivision that governs the cover, length, and content of an amicus brief. An amicus brief must comply with the formatting and length requirements of Rule 20. However, an amicus brief does not need to comply with all of the content requirements applicable to a party's brief under Rule 16. Instead, Rule 17(c) explicitly references certain provisions of Rule 16 that are applicable to an amicus brief. Text was also added to clarify an amicus brief may be struck by an appellate court or single justice if it does not comply with Rule 17(c).

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

Rule 17(c)(5)(D) requires disclosure concerning whether "the amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal," in accord with Aspinall v. Philip Morris Co., Inc., 442 Mass. 381, 385 n.8 (2004), and Champa v. Weston Public Schools, 473 Mass. 86, 87 n.2 (2015). In determining whether another proceeding involves similar issues, the amicus and its counsel need only consider issues that have been explicitly raised in, and that are directly relevant to, the other proceeding and the present appeal. Likewise, in determining whether another proceeding or transaction is at issue in the present appeal, the amicus and its counsel need only consider whether that proceeding or transaction has been explicitly put at issue in the appeal. Similar to Fed. R. App. P. 29(a)(4)(E), the Commonwealth and its officer or agency are exempted from the requirements in Rule 17(c)(5).

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

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

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

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

Rule 18. Reporter's Notes--2019

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

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

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

Rule 18(a)(1)(A) lists the items in the order in which they must appear in an appendix. Prior Rule 18(a) did not explicitly specify the arrangement of an appendix. As a result, the format of appendices was often inconsistent, making it difficult to locate necessary parts of the record below. This amendment is intended to streamline the rule as to the content and arrangement of an appendix, reduce confusion for litigants, help ensure appendices are complete, and facilitate review by the appellate court.

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

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

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

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

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

Rule 18(a)(1)(C) is a new subparagraph intended to facilitate the reading of appendices in electronic form, consistent with the appellate court's paperless practices, and particularly in cases in which multiple appendix volumes are filed. The first volume of the appendix is to include a complete table of contents referencing all volumes of the appendix, and each individual volume must include a table of contents for that volume. To facilitate review by the court, the table of contents should identify each separate document included in each respective volume and the page in the volume where the document begins. Further, when a principal document contains multiple documents attached as exhibits, such as a motion for summary judgment package or administrative agency record, the table of contents should list the motion and each individual document filed with the motion, and the page of the appendix where each document is located.

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

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

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

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

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

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

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

prior Rule 18(f) was struck, as that subdivision was deleted from the amended rule for the reasons stated below.

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

Rule 18(b)(5) is a new paragraph which addresses the filing of a supplemental appendix in civil cases. The requirements for filing a supplemental appendix are included in separate subparagraphs for ease of reference. Appellees and cross-appellees in civil cases often submit supplemental appendices without realizing that leave of court is required. This rule clarifies the process for filing a supplemental appendix in a civil appeal and incorporates current practice requiring leave of court for such filing. This rule promotes judicial efficiency by reducing delays associated with the submission of a supplemental appendix without leave of court and ensures that the docket will note the filing of a supplemental appendix. In addition, requiring leave of court in a civil matter encourages parties to abide by the provisions of Rule 18(b) regarding designation and agreement as to the contents of the record appendix at the outset of the case.

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

The filing and service requirements related to exhibits and transcripts in prior Rule 18(e), were relocated, with slight revisions, to Rule 19(d)(2). This amendment was made because exhibits and transcripts are filed and served contemporaneous with a brief. See Reporter's Notes to Rule 19(d)(2). The remainder of prior Rule 18(e) was designated in the amended rules as Rule

18(c), and is revised to clarify that in civil cases parties are authorized to reproduce exhibits and transcripts or portions thereof for inclusion in the appendix.

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

Rule 18(d), which comprises prior Rule 18(g), adds a requirement to the prior rule that when a separate appendix of impounded material is filed, any lower court order impounding the material must be included in the impounded appendix volume(s). This amendment codifies current impoundment procedures and further ensures the protection of the impounded information.

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

Rule 18(f) is a new subdivision addressing filing and service of the appendix, including exhibits and transcripts or portions thereof filed in a civil case. The subdivision incorporates the requirements of Rule 19 to the filing and service of the appendix.

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

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

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

Rule 19. Reporter's Notes--2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 20. Reporter's Notes--2019

The title of Rule 20 was amended to indicate that it encompasses the length of the referenced appellate documents, as well as the form. In addition, prior Rule 20's paragraphs were numbered, reordered, revised, and new paragraphs were added for clarity and ease of reference.

Rule 20(a). The title of this subdivision was amended to indicate that it applies both to the form and length of briefs, appendices, and applications for, and responses to, direct and further appellate review.

Rule 20(a)(1) addresses the form of briefs, appendices, and applications for, and responses to, direct and further appellate review. Reference to the format of appendices in the first paragraph of the prior rule was deleted and the content, with revisions, was relocated to Rule 20(a)(5).

Rules 20(a)(2) and 20(a)(3) are new paragraphs. Rule 20(a)(2) addresses the length of briefs in all cases other than cross appeals, and Rule 20(a)(3) establishes the length of briefs in cross appeals. These paragraphs allow the use of a word limit together with a proportionally spaced font, as an alternative to a page limit, in setting the permissible lengths of principal and reply briefs. The word limits are not intended to allow for longer documents. The limits allow no more than the amount of text permitted under the prior rules. For a comprehensive discussion of the word count amendment, see the 2019 Reporter's Notes to Rule 1.

Rule 20(a)(4). The content from the second paragraph of prior Rule 20(a) concerning the format of text on the pages of the documents encompassed in the rule was revised and relocated to Rule 20(a)(4). The revisions include the addition of applications for, and responses to, direct and further appellate review to clarify that the text requirements also apply to these documents. In addition, the rule was amended to include the word count alternative to the page limit.

Rule 20(a)(4)(A) provides that if a proportionally spaced font is used, all margins shall be at least one inch. This is intended to improve readability and is consistent with the analogous Federal rule. See Fed. R. App. P. 32(a)(4). The subparagraph retains the traditional 1.5 inch left and right margins from prior Rule 20(a)(1) only if a monospaced font is used.

Rule 20(a)(4)(A) also specifies the pagination requirements for briefs and applications for and responses to direct or further appellate review. The page numbers shall appear in the margin with the cover paginated as page one pursuant to Rule 20(a)(6)(B)(vii), and pages thereafter numbered consecutively through the last page. Any addendum is included in this requirement and should continue the pagination of the document itself without beginning again at page one. This provision is intended to facilitate reading documents in electronic form.

Rule 20(a)(5) is a new paragraph addressing the format and length of a record appendix. The rule requires that the cover of each volume of the appendix be designated by a Roman numeral, that each volume of the appendix be separately paginated with the cover designated as page 1, and that pages thereafter be numbered consecutively through the volume's final page. This paragraph is intended to facilitate reading appendices in electronic form.

Rule 20(a)(6). The content from the final paragraph of prior Rule 20(a) was revised, relocated to Rule 20(a)(6), and separated into new subparagraphs. Rule 20(a)(6)(A) addresses the color of the cover of briefs, appendices, and applications for or responses to direct or further appellate review. Rule 20(a)(6)(B) specifies the contents of the cover of briefs and appendices.

Rule 20(a)(6)(A). The content of the prior rule was revised to change the color of the cover of a brief filed by a party intervening in the appeal from green to yellow. This is intended to prevent confusion with the color of a brief of an amicus curiae, which is required to be green. Text was also added to clarify that the cover to applications for, or responses to, direct or further appellate review are white. Finally, the phrase "if separately bound" was removed from the existing requirement that appendix covers be white because under Rule 18(a), as amended, all appendices must now be bound separately from the brief. Color requirements do not apply to electronically-filed briefs.

Rule 20(a)(6)(B). The requirements regarding the contents of the cover of these documents were revised. The word "e-mail address" was revised to "electronic address," to clarify that both "mailing and electronic addresses" are required. Explicit reference to Rule 16(m) was added to ensure briefs referencing impounded material are clearly marked.

Rule 20(a)(7). The content from the first sentence of the third paragraph of prior Rule 20(a) was converted into new stand-alone Rule 20(a)(7). This amendment was made in order to separate the requirements for the form and length of briefs and appendices from the consequences should a brief or appendix not be in substantial compliance with Rule 20.

Prior Rule 20(b) was divided into two separate paragraphs. The first paragraph of prior Rule 20(b) is now Rule 20(b)(1). Reference to "[p]etitions for rehearing" was changed to "motion for reconsideration or modification," consistent with revisions to Rule 27. See 2019 Reporter's Notes to Rule 27. Language prescribing the form of a motion for reconsideration or modification was stricken and replaced with an explicit reference to Rule 27, which provides for the form of such a motion.

The remaining paragraphs of prior Rule 20(b) now encompass Rule 20(b)(2). Specifying in one paragraph the required structure for motions promotes clarity for parties submitting

motions, and will promote a consistent format for review by the court. Rule 20(b)(2)(A) was added to specify basic formatting and length requirements of motions. There is no page limit for motions, but motions "shall be no longer than reasonably necessary." In some circumstances, the appellate courts have specified page limits of a motion. See Appeals Court Standing Order Governing Motions to Stay a Judgment or Execution of Sentence Filed Pursuant to Mass. R.A.P. 6 (setting 5 page limit for motion and 15 page limit for supporting memorandum of law). Rule 20(b)(2)(B) includes language added to the requirements for the end of a motion included in the prior rule to specify that "address" includes both the electronic and mailing address of the party, and to require the inclusion of the date of signing.

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

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

Rule 21. Reporter's Notes--2019

Rule 21 was completely revised in 2019. Prior Rule 21 allowed the court to hold a prehearing conference "to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court." This rule was stricken entirely as such conferences are not held. Even without such a rule, an appellate court or a single justice thereof still has the inherent authority to order such a conference.

Rule 21 was revised to encompass requirements related to the redaction of publicly available documents. The amendment serves to alert attorneys, parties, and interested members of the public to the requirements of S.J.C. Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents. Under S.J.C. Rule 1:24, unless there is an exception, personal identifying information, such as social security numbers, parent's birth surnames, driver's license numbers, and financial account numbers, may not be included in documents filed in court unless redacted as set forth in the rule. Identical cross-references to S.J.C. Rule 1:24 were added in 2017 to Mass. R. Civ. P. 5(h) and Mass. R. Crim. P. 32(f).

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

Rule 22. Reporter's Notes--2019

Rule 22(b) was amended to clarify that requests for additional argument time must be made reasonably in advance of the date fixed for oral argument.

Rule 22(c) was revised into two paragraphs. Rule 22(c)(1) addresses the rules for oral argument. The sentence providing that nothing argued in a brief is deemed waived by a failure to argue orally was relocated from prior Rule 16(a)(4) because Rule 22 is a more appropriate location as it concerns procedures for oral argument. Rule 22(c)(2) is a new paragraph that clarifies the procedure and limits of a post-argument filing. Once oral argument is completed, a party may not submit any additional argument on the merits in the case other than a citation of supplemental authorities pursuant to Rule 16(l), a letter correcting a factual misstatement of any party during oral argument, or when otherwise allowed by leave of court. Although a letter containing citation of supplemental authorities pursuant to Rule 16(l) does not require leave of court, a submission containing argument on the merits does, and may be struck by the court if no leave has been granted. This amendment is not intended to modify existing practice where a justice requests or permits a party to file a letter at oral argument. A party who is given leave during oral argument should identify that leave has been given in the party's post-argument filing.

Rule 22(d) previously included a sentence relating to designation of the parties in a cross appeal. The substance of this sentence was moved to Rule 10(a)(7), which governs the docketing of an appeal. A party's designation, including in any cross appeal, is important at the outset of the case.

Rule 22(e). The first sentence was added to clarify that parties do not have the option not to attend oral argument without prior arrangements having been made with the court.

Rule 22(f), which previously prohibited an attorney who has been a witness in a case from appearing at oral argument without leave of court was stricken because there are several circumstances in which an attorney may testify under Mass. R. Prof. C. 3.7(a). The subsequent subdivisions were re-lettered.

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

With regard to the preparation of the 2019 Reporter's Notes to this Rule, see the first paragraph of the 2019 Reporter's Notes to Rule 1. For an overview of the 2019 amendments to

the Rules and a summary of the global amendments to the Rules, see 2019 Reporter's Notes to Rule 1, sections *I.* and *II.*

Rule 23. Reporter's Notes--2019

The title and body of Rule 23 were revised for consistency with the new definition of "decision," and revised definition of "rescript" in Rule 1(c). These revisions clarify the distinction between the clerk's release of a decision to the parties and the clerk's issuance of the rescript to the lower court. Prior Rule 23's use of the word "rescript" often confused parties because it referred both to the appellate court's decision and to the order or direction to the lower court disposing of the appeal that is transmitted to the lower court 28 days after the release of the court's decision. This confusion resulted sometimes in parties not filing timely petitions for rehearing (the term used for Rule 27's motion for reconsideration or modification of decision prior to the 2019 amendments to the Rules) or applications for further appellate review since each filing was due within a specific time after the date of the rescript.

Rule 23(a) identifies the clerk's responsibilities to issue notice of the appellate court's release of a decision, and in Rule 23(b) to issue the rescript to the lower court. When read together, the amendments to Rules 23(a), 23(b), 27(a), and 27.1(a), establish the sequence of events that occur when an appellate court releases a decision: the clerk notifies the parties, the time period commences for filing a motion for reconsideration or modification (and, if the decision is released by the Appeals Court, an application for further appellate review), and the clerk issues the rescript and decision to the lower court 28 days later unless such issuance is stayed for one of the reasons delineated in Rule 23(c). Rule 23(a) was also revised to include that the appellate court clerk may electronically transmit a decision and rescript.

Rule 23(c). Consistent with amendments to Rule 27, the term "petition to rehearing" was changed to "motion for reconsideration or modification."

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

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

Rule 24. Reporter's Notes--2019

Rule 24(a) was revised to clarify that the recording of any oral argument is part of the record for review of a justice called in to take part in a decision after oral argument. The word "perusal" was replaced with "review." Although the terms have nearly identical meanings, "review" is more commonly used today.

Rule 24(b) is a new subdivision and, conformably with current practice, allows for the replacement of a justice should that justice become unable to participate in the case. The Chief Justice of the appellate court has the authority to make the substitutions as needed. Prior Rule 24(b) was re-lettered Rule 24(c).

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

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

Rule 24.1. Reporter's Notes--2019

Prior Rule 24.1 described the procedure for when there is a divided vote on further appellate review. The procedure governing applications for further appellate review is otherwise set forth in Rule 27.1. Instead of having separate but related parts of the same topic in nonconsecutive rules, the 2019 revision deleted Rule 24.1 and relocated its substance to Rule 27.1(g).

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

Rule 25. Reporter's Notes--2019

The title of Rule 25 was revised by replacing the word "Delay" with "Frivolous" to more accurately describe the topic addressed by the rule. Additionally, the substance of the free-standing parenthetical subtitle "(Applicable to Civil Cases)" indicating the rule applies only in civil cases was moved to the title of the rule and expressly referenced in the body of the rule to improve clarity. The final sentence was added to reflect existing practice of the appellate courts, and is similar to Fed. R. App. P. 38.

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

Rule 26. Reporter's Notes--2019

The free-standing parenthetical subtitle "(Applicable to Civil Cases)" in prior Rule 26 was deleted and its substance moved to the title of Rule 26 and to the introductory sentence.

Rule 26(a) was revised to simplify the language of the sentence and add numbering to the various scenarios in which costs may be taxed. The list was also expanded to include judgments affirmed in part or modified in those situations where the costs are taxed only as ordered by the appellate court. New language was added to provide that costs are not to be taxed against a party determined indigent in the same proceeding.

Rule 26(c). Language including copies of records authorized by prior Rule 18(f) as taxable costs was deleted consistent with the deletion of that provision as described in the 2019 Reporter's Notes to Rule 18(f).

Rule 26(d). Language indicating that a fee for filing a notice of appeal will be taxed as a cost was deleted. Though the prior language of this Rule tracked the Federal rule, a fee for filing the notice of appeal does not exist for appeals that will be heard in the Appeals Court or the Supreme Judicial Court. Rather, a fee, if required, is paid upon docketing. The language was updated to reflect this practice. In addition, language was added indicating that certain administrative and convenience fees are recoverable costs, such as credit card convenience fees, fees incurred when electronically filing, and other such costs. This change updates the rule to reflect current costs that may be incurred by a party in prosecuting an appeal.

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

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

Rule 27. Reporter's Notes--2019

The title of Rule 27 was changed from "petition for rehearing" to "motion for reconsideration or modification of decision." This revision more appropriately describes such filings which rarely, if ever, seek an oral argument and rehearing of a case before the justices and instead typically request a reconsideration or modification of the decision.

The term "rescript" in Rule 27(a) was changed to "decision of the appellate court," consistent with the new definitions in Rule 1(c). This change clarifies that a motion is due 14 days after the date of the decision, making it clear to the parties that it is the decision that triggers commencement of the time period , and not the clerk's issuance of the rescript to the lower court. Language relating to an "answer to a petition," now referred to as a "response," was moved to Rule 27(c) to promote clarity of the related procedures.

Consistent with the revisions to other rules, Rule 27(b) was amended to include the new option for a word count using proportionally spaced font and to clarify that the page limit option follows the monospaced font requirement in Rule 20(a). The first sentence of prior Rule 27(b), concerning the form of a "petition" as a letter addressed to the senior justice was deleted as inapplicable in light of the change to the title and form of these documents.

Rule 27(c) is a new subdivision titled "Response." The language for this subdivision comes from prior Rule 27(a). The word "answer" is no longer used to signify a response to a motion for reconsideration or modification of decision. Lastly, this new subdivision clarifies the formatting requirements applicable to a requested response.

Rule 27(d) is a new subdivision titled, "Filing and Service." Under prior Rule 27(b), litigants sometimes mailed the request directly to the senior justice and/or panel that decided the appeal instead of filing it in the appellate court clerk's office. Adding language about filing and service requirements clarifies the appropriate filing procedures.

Rule 27(e) is a new subdivision titled, "Ruling on Motion." The contents of the subdivision are taken from prior Rule 27(a). Placing this information in its own subdivision increases the readability of the Rules and makes it easier to refer to its requirements.

Rule 27(f), prior Rule 27(c), was revised by striking the first sentence of prior Rule 27(c), which is redundant considering Rule 27(e) now authorizes the appellate court to order review or revision of opinions when a motion is allowed. The language in the remaining sentence is updated for consistency with the revisions made in the preceding subdivisions, e.g., "petition" is changed to "motion." In addition, language regarding notification to the Supreme Judicial Court

of any action on the motion is streamlined, and a requirement that this notification be made "promptly" is added.

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

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

Rule 27.1. Reporter's Notes--2019

Rule 27.1(a). The word "rescript" was replaced with "decision" consistent with the new definitions contained in Rule 1(c), and the related amendments made to Rule 23, to clarify the distinction between the clerk's release of a decision to the parties and the clerk's issuance of the rescript to the lower court, (see 2019 Reporter's Notes to Rules 1(c) and 23), and that is the appellate court's release of the decision that commences the timeframe for filing an application for further appellate review. A party has 21 days after the date of the decision of the Appeals Court to file an application for further appellate review in the Supreme Judicial Court. The time period does not commence on the date the Appeals Court issues the rescript to the lower court.

Rules 27.1(a) and (b). References to "an application for leave to obtain further appellate review" were revised to "an application for further appellate review" to simplify the phrase. No substantive change was intended. See G.L. c. 211A, § 11.

Rules 27.1(b) and (c), governing the length requirements of both the application and response, were revised to include the new word count alternative to the page limit, as explained in the 2019 Reporter's Notes to Rule 1.

Rule 27.1(c) was amended to change "opposition" to "response" to more generally describe an answer to an application since not all applications are opposed.

Rule 27.1(d) was revised to reduce the number of copies of an application or response to an application for further appellate review that must be filed from "an original and seventeen copies" to 1 copy and the requirement that a copy need be filed in the Appeals Court was deleted. Fewer copies are required in the Supreme Judicial Court due to advances in paperless practices and no copy is required in the Appeals Court because the Appeals Court receives automatic notification from the Supreme Judicial Court when an application for further appellate review, or a response to an application, is filed, and an electronic copy of the document is automatically shared with the Appeals Court.

Rule 27.1(e). The phrase "upon receipt, further appellate review shall be deemed granted" was removed. According to the prior rule, although the Supreme Judicial Court entered and sent notice of an order granting further appellate review, the application would not be "deemed granted" until the Appeals Court received the order. By deleting this phrase, consistent with all other orders issued by an appellate court, the order is effective upon entry. The rule was also amended to require the Supreme Judicial Court to send notice to the lower court when it grants further appellate review.

The content of prior Rule 27.1(g), governing order of oral argument in cases argued on further appellate review, was removed. The order of argument in a case where further appellate review is granted will be the same as in any other case, with the appellant arguing first. See Rule 22(c)(1). As prior Rule 24.1 (Divided Vote on Further Appellate Review) and Rule 27.1 are closely-related, prior Rule 24.1 was deleted and its content moved to Rule 27.1(g). See 2019 Reporter's Note to Rule 24.1.

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

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

Rule 28. Reporter's Notes--2019

The title of Rule 28 was revised to "Procedure in Lower Court Following Rescript," to clarify the content and applicability of the rule. The parenthetical indicating that Rule 28 applies only to civil cases was deleted because the rule, as amended, also applies to criminal cases.

Rule 28 was separated into two subdivisions, one concerning civil cases and the other concerning criminal cases. The prior language, found in Rule 28(a), encompasses the procedure in civil cases. Rule 28(b) was added to govern the procedure in criminal cases. The language requires action when the rescript reverses or remands a case to the lower court, to ensure a timely hearing is scheduled for further proceedings.

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

Rule 29. Reporter's Notes--2019

Rule 29(a) was revised to improve clarity. No substantive change was intended.

Rule 29(b). The title of this subdivision was amended to include the word "voluntary" to more accurately reflect the substance of the subdivision. Rule 29(b) was divided into two separate paragraphs, one addressing voluntary dismissal in civil cases and another addressing voluntary dismissal in criminal cases, because the processes differ. Rule 29(b)(2) provides that although a criminal appeal or other proceeding may be voluntarily dismissed, if the appellant is the defendant, an affidavit by the defendant or an attestation by counsel is required stating that the defendant assents to the dismissal of the appeal with prejudice. This language is consistent with existing practice.

Rule 29(d) is a new subdivision that requires the appellate court clerk to notify promptly the lower court when an appeal is dismissed pursuant to Rule 29. Under prior Rule 29(b), such a requirement was only applicable in a criminal case.

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

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

Rule 30. Reporter's Notes--2019

Rule 30 was amended by striking a free-standing parenthetical subtitle ("Applicable to Civil Cases"), and adding "in Civil Cases" to the title of the rule. The amendment was made to clarify the content and applicability of the rule and to eliminate a drafting technique unique to only a few prior rules that may have led to confusion.

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

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

Rule 31. Reporter's Notes--2019

Rule 31(a). The first two sentences of the prior rule were deleted as unnecessary because the clerk's oath and bond requirements are established by statute (G.L. c. 221, § 12) and the prohibition on practicing law has been superseded by S.J.C. Rule 3:02 and S.J.C. Rule 3:12, Canon 3. The provisions regarding specific business hours of court (weekdays and holidays) were removed because they are outside the scope of the Rules of Appellate Procedure.

Rule 31(b) was separated into three paragraphs for clarity, and the language updated for consistency, with current practices and the revisions to the definitions in Rule 1(c). Consistent with the appellate courts' longstanding practices, the revised rule includes child welfare cases as proceedings to be given preference by the clerk when scheduling cases for argument. Criminal cases and other proceedings are entitled to preference by law. See G.L. c. 211, § 7 and G.L. c. 211A, § 13.

Rule 31(c). The title of this rule was amended to include "decision" given its addition in 2019 to Rule 1(c). Language was added authorizing the clerk to send notices to an attorney's electronic business address registered with the Board of Bar Overseers, and providing that paper notice by conventional mail may be sent. In addition, the clerk is authorized to send electronic or paper notice to self-represented parties, depending upon such party's preference as registered with the clerk.

Rule 31(d). In the last sentence, the phrases "upon the disposition of the case" and "from which they were received" were deleted. The first phrase was deleted because it is current practice to return original documents transmitted to an appellate court back to the lower court when review of the case is completed; the clerk does not presently wait for disposition of the case before doing so. The second phrase was deleted as unnecessary; the clerk of the appellate court only returns original documents to the lower court which had transmitted the records.

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

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