

THE 2019 AMENDMENTS
TO THE
MASSACHUSETTS RULES OF
APPELLATE PROCEDURE

STRIKETHROUGH VERSION

KEY TO REPORTER'S CONVENTIONS

Original language = regular typeface

~~Strikethrough~~ = removed

Bold = addition to rule

Rule 1. Scope of Rules: Definitions

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

(b) **Rules Not to Affect Jurisdiction.** These rules shall not be construed to extend or limit the jurisdiction, as established by law, of the Supreme Judicial Court or the Appeals Court. ~~All proceedings related to any appeal from: (a) a decision of a single Justice of the Supreme Judicial Court, and (b) a decision of any tribunal, appeal from which must by law be brought in the Supreme Judicial Court, shall be had only before the full Supreme Judicial Court or a single justice thereof (unless transferred to the Appeals Court by order of the Supreme Judicial Court). But these rules shall govern such proceedings, except as provided in Supreme Judicial Court Rule 2:21.~~

(c) **Definitions.** As used in these rules, **unless the context clearly indicates otherwise:**

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

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

“child welfare case” means any case that is before a court of competent jurisdiction pursuant to G.L. c. 119, §§ 21-39J; G.L. c. 190B, ~~Parts 2 and 3~~ **regarding guardianship of minors**; or G.L. c. 210, §§ 1-11.

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

“**decision**” means, when referring to an appellate court, **the court’s written opinion, memorandum and order pursuant to Appeals Court Rule 1:28, or other final adjudicative order in the case.**

“**first class mail or its equivalent**” means (1) use of **the United States Postal Service through first class postage or other class of mail that is at least as expeditious,**

postage prepaid or **(2) dispatch to a third-party commercial carrier for delivery within 3 days.**, ~~whether certified, registered, uncertified, or unregistered.~~ Registration or certification shall not be required unless specifically stated to be necessary.

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

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

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

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

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

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

(d) Construction. Words or phrases importing the singular number may extend and be applied to several persons or things, **and** words importing the plural number may include the singular, ~~and words importing the masculine gender may include the feminine and neuter.~~

Rule 2. Suspension of Rules

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

Rule 3. Appeal—How Taken

(a) Filing the Notice of Appeal.

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

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

(b) ~~Joint or Consolidated Appeals~~ **Appeals by Multiple Parties**. If ~~two~~ **2** or more persons are entitled to appeal from a judgment, **decree, adjudication, or order, or part thereof** of a lower court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, ~~and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.~~

(c) Content of the Notice of Appeal.

(1) **Content of the Notice of Appeal, Generally**. The notice of appeal shall specify the party or parties taking the appeal and shall, in civil cases, designate the judgment, decree, adjudication, order, or part thereof appealed from.

(2) **Content of the Notice of Appeal in Child Welfare Cases**. In child welfare cases, the notice of appeal and any request for a transcript, if required, shall be signed by the ~~party or parties~~ **person or persons, or by counsel for the entity**, taking the appeal; ~~unless however, if the appellant is the a minor subject of the action;~~ **the notice and request shall be signed by the minor's counsel**. ~~a~~ A notice of appeal that is not so signed shall not be accepted for filing by the clerk.

(d) Service of the Notice of Appeal. The clerk of the lower court shall serve notice of the filing of a notice of appeal by ~~mailing~~**transmitting** a copy thereof to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the party ~~at his last known address~~. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or ~~his~~ counsel. The clerk shall note in the docket the names of the persons to whom **copies are transmitted, and the date of transmission**~~he mails copies, with the date of mailing~~.

(e) Change of Counsel on Appeal in Criminal and Certain Non-criminal Cases. If the defendant in a criminal case, or any party in any other proceeding, excluding child welfare cases, in which counsel is required to be made available to such party pursuant to Supreme Judicial Court Rule 3:10, was represented by counsel at trial, **the trial court** counsel shall continue to represent that party on appeal until ~~the trial court permits him to withdraw his appearance and until an appearance is filed by substitute counsel, if such assignment of counsel is made by the Committee for Public Counsel Services. In such proceedings, assigned trial court counsel shall, no later than the day on which the notice of appeal is filed, notify the Committee for Public Counsel Services that appellate counsel should be assigned. Assigned appellate counsel shall promptly file a notice of appearance in the trial court, following which trial court counsel may file a notice of withdrawal. If trial counsel wishes to withdraw, he shall, on the day upon which the notice of appeal is filed, file a motion to withdraw. Any motion under this provision shall be marked up by the trial counsel for hearing no later than seven days after filing. If the motion to withdraw is allowed, the judge shall assign the Committee for Public Counsel Services to provide representation according to the procedures established in Supreme Judicial Court Rule 3:10.~~

(f) Appointment of Appellate Counsel in Child Welfare Cases.

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

(2) Trial Lower court counsel shall, on the day upon which the signed notice of appeal is filed, file, and request a hearing on, a motion to allow reasonable costs associated with the appeal **in the lower court**. At the same time, if ~~trial~~**lower court** counsel is not appellate certified by the Committee for Public Counsel Services, counsel shall also file, and request a hearing on, a motion to appoint counsel for appellate purposes **in the lower**

court. Subject to the provisions of Supreme Judicial Court Rule 3:10, § 7, ~~trial-lower~~ **court** counsel shall continue to represent the party at all ~~trial-lower~~ court proceedings.

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

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

Rule 4. Appeal—When Taken

(a) Appeals in Civil Cases.

(1) In a civil case, unless otherwise provided by statute, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within ~~thirty~~ **30** days of the date of the entry of the judgment, **decree, appealable order, or adjudication** appealed from; but if the Commonwealth or an officer or agency thereof is a party, the notice of appeal may be filed by any party within ~~sixty~~ **60** days of such entry, except in child welfare cases, in which the notice of appeal shall be filed within ~~thirty~~ **30** days from the date of the entry of the judgment, decree, **appealable** order, or adjudication. If a notice of appeal is mistakenly filed in an appellate court, the clerk of such appellate court shall note the date on which it was received and transmit it to the clerk of the lower court from which the appeal was taken and it shall be deemed filed in such lower court on the date so noted. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ~~fourteen~~ **14** days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

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

(~~1~~**A**) for judgment under Rule 50(b);

(~~2~~**B**) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

(~~3~~**C**) to alter or amend a judgment under Rule 59 or for relief from judgment under Rule 60(**b**), however titled, **but only** if either motion is served within ~~ten~~ **10** days after entry of judgment; or

(~~4~~**D**) under Rule 59 for a new trial, ~~the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion.~~

(3) A notice of appeal filed before the disposition of any ~~of the above~~ **timely motions listed in Rule 4(a)(2)** shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the **last such**

remaining motion as provided above. No additional fees shall be required for such filing.

(b) Appeals in Criminal Cases.

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

(2) The running of the time for filing a notice of appeal shall be terminated as to the moving party by a motion for a new trial pursuant to Massachusetts Rules of Criminal Procedure **25(b)(2) and 30** filed in the lower court within ~~thirty~~**30** days after the verdict or finding of guilt or within ~~thirty~~**30** days after imposition of sentence, and the full time fixed by this rule shall commence to run and shall be computed from the date of entry of an order denying such motion.

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

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

Rule 5. Report of a Case for Determination

A report of a case for determination by an appellate court shall for all purposes under these rules be taken as the equivalent of a notice of appeal. Whenever a case or any part of it is reported after decision or verdict, the aggrieved party (as designated by the lower court) shall be treated as the appellant. Whenever a case or any part of it is reported without decision or verdict, the plaintiff in a civil action or the defendant in a criminal case shall be treated as the appellant. The clerk of the lower court shall serve notice of the filing of the report by ~~mailing~~ **transmitting** a copy thereof to ~~counsel of record for each party; or if a party is not represented by counsel, to the party at his last known address.~~

Rule 6. Stay or Injunction Pending Appeal

(a) Civil Cases.

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

(2) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties. Relief available in the appellate court under this rule may be conditioned upon the filing of a bond or other appropriate security in the lower court. If security is given in the form of a bond or stipulation or other undertaking with ~~one~~ **1** or more sureties, each surety thereby shall submit to the jurisdiction of the lower court and irrevocably appoint the clerk of the lower court as an authorized agent upon whom any ~~papers~~ **documents** affecting liability on the bond or undertaking may be served. A surety's liability may be entered against the surety on motion in the lower court without the necessity of an independent action. The motion and such notice of the motion as the lower court prescribes may be served on the clerk of the lower court, who shall forthwith mail copies to the sureties if their addresses are known.

(3) Terms. Relief available in the appellate court under this rule, or denial of such relief, may be conditioned on such reasonable-terms as the appellate court or single justice may impose. For failure to observe such terms, the appellate court or single justice may make such further order as it or ~~he~~ **the single justice** deems just and appropriate.

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

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

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

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

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

(i) ~~if~~ if the motion is filed at least 30 days prior to the date the appellant's brief is due, the time for a response shall be governed by Rule 15; or

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

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

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

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

(5) Expiration of Stay. Upon the release of the ~~rescript~~**decision** by the appellate court of a judgment affirming the conviction, the stay of execution of **the** sentence automatically expires, unless extended by the appellate court.

(6) Notice of Expiration of Stay. Upon release of a ~~rescript~~**decision** affirming the conviction, the clerk of the appellate court shall notify the clerk of the ~~trial~~**lower** court and the parties that the conviction has been affirmed and that therefore, the stay of execution of **the** sentence has automatically expired.

Rule 7. Disability of a Member of the Lower Court

If by reason of death, sickness, resignation, removal, or other disability, ~~the~~ a judge or judges whose decision has been appealed to the appellate court **becomes** unable to ~~perform the duties to be performed under these rules by the lower court~~ **participate further**, then any other judge ~~regularly sitting in~~ **of** or assigned to ~~such~~ **the** lower court may, ~~on assignment by the Chief Justice or presiding judge of such lower court,~~ **perform those duties be substituted.**

Rule 8. The Record on Appeal

(a) **Definition.** **The record on appeal shall consist of the documents and exhibits on file, the transcript of the proceedings, if any, and the docket entries.** ~~Composition of the Record on Appeal. The original papers and exhibits on file, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases. In a civil case, in an appeal from an appellate division, the original papers and exhibits shall include the report of the trial judge to the appellate division with any exhibits made a part of such report.~~

(b) ~~The~~ **Producing the** Transcript of Proceedings.

(1) ~~Civil Cases, Except~~ **Other than** Child Welfare Cases:

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

(B) **Stipulation that Transcript is Unnecessary.** To the extent consistent with the appellant's duty to provide an adequate record to the appellate court, the parties may stipulate that the transcription of some or all of the proceedings relevant to the appeal is unnecessary to the adjudication of the appeal, in which case the appellant need order only the transcript of the proceedings, if any, that the parties agree are necessary to the adjudication of the appeal.

The parties shall file the stipulation with the clerk within 14 days of the filing of the notice of appeal.

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

~~Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered.—Within ten days after filing the notice of appeal the appellant shall order from the court reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within 10 days after the service of the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. If the appellant shall refuse to order such parts, the appellee shall either order the parts or apply to the lower court for an order requiring the appellant to do so. At the time of ordering, a party shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript.~~

(2) Criminal Child Welfare Cases: Duty of Clerk; Duty of Court Reporter. Upon the filing of a notice of appeal, unless the parties file a stipulation designating the parts of the proceedings which need not be transcribed or a statement of intent to proceed under Rule 8(d), the clerk of the lower court shall order, within 14 days and in accordance with procedures set by the Chief Justice of the Trial Court, a transcript of the proceedings relevant to the appeal and shall serve a copy of the transcript order on the parties. Upon the filing of a notice of appeal, unless the parties file therewith a stipulation designating the parts of the proceedings which need not be transcribed, the clerk of the lower court, within ten days, shall order from the court reporter a transcript of the proceedings and shall file a certificate of such order. The parties are encouraged to stipulate to those parts of the proceedings which are unnecessary to the appeal. Upon receipt of an order, the court reporter shall prepare one

~~original typed transcript. The court reporter shall deliver the original typed transcript to the clerk of the lower court who shall, by means of xerography or other similar method which produces legible copies, prepare one copy thereof for each of the appellate court, the appellant, and the appellee. The clerk of the lower court shall deliver one copy each to the appellant and the appellee and shall certify that the copies of the appellant and appellee have been delivered. The clerk of the lower court shall retain custody of the original typed transcript and one copy thereof until the record is transmitted to the appellate court as provided by Rule 9(d).~~

~~The Commonwealth shall pay the cost of the original of the typed transcript and a copy for the appellate court. Except as provided in Rule 8(b)(4), the cost of the copy for the appellant shall be paid for by the appellant.~~

(3) Electronically Recorded Proceedings, Except Child Welfare Cases. Delivery of the Transcript. Upon completion, the transcriber shall deliver the transcript to the clerk of the lower court in accordance with procedures set by the Chief Justice of the Trial Court. The delivery of transcripts to the parties shall be governed by procedures set by the Chief Justice of the Trial Court. Upon receipt of all of the transcripts ordered by the parties, the clerk shall notify all parties within 14 days that the transcripts have been received.

~~(i) Applicability. Rule 8(b)(3) applies to proceedings which were recorded electronically on equipment under the control of the court and which were not recorded by an official court reporter.~~

~~If, however, a complete transcript of the electronic recording has been produced for use by the trial court, and it or a copy is available to the parties, such transcript or copy shall be utilized in lieu of preparing another pursuant to this Rule 8(b)(3). Upon receipt of the notice of appeal in such cases, the clerk shall advise the parties of the name of the preparer of the transcript; the parties shall then follow the procedure under Rule 8(b)(1) in a civil case, or Rule 8(b)(2) in a criminal case, as if a court reporter had been present, except the appellant's time for ordering a transcript shall be extended to within ten days after appellant's receipt of the clerk's notification of the name of the preparer of the transcript.~~

~~(ii) Duties of the Appellant and of the Clerk; Selection of Transcriber. If the appellant deems all or part of the electronic recording necessary for inclusion in the record, the appellant shall, simultaneously with filing a notice of appeal, order from the clerk of the lower court, in accordance with any rule or established policy of the court, a cassette copy of the electronic recording, which is hereinafter called 'the cassette.' The clerk shall promptly provide the cassette, unless the provisions of the second paragraph of Rule 8(b)(3)(i) apply. If a~~

~~portion of the electronic recording has already been transcribed for use by the trial court, and such transcript or a copy is available to the parties, the clerk shall, in addition to providing the cassette, at the same time advise the parties of the name of the preparer of the transcript.~~

~~Within fifteen days of receipt of the cassette from the clerk, appellant shall file in court and serve on each appellee a document which includes the date of receipt of the cassette; a designation of the parts of the cassette the appellant intends to include in the transcript; and the name, address, and telephone number of the individual or firm selected to prepare the transcript, provided that the appellant and each appellee have agreed to this choice and the appellant so states. If the appellant and appellees have not so agreed, said document shall also specifically notify the clerk to select the transcriber.~~

~~The designation of the parts of the cassette to be transcribed should be precise and include such details as the name of the witness whose testimony has been designated and the portions to be included, giving an exact quote of the beginning words and concluding words of each designated portion.~~

~~If such selection of an individual or firm to prepare the transcript is not included, or if the transcript is to be provided at the expense of the Commonwealth, the individual or firm shall be selected by the clerk. When the selection is made by the clerk, the individual or firm shall be selected in accordance with procedures promulgated by the Chief Administrative Justice. The clerk shall promptly notify all parties of any such selection made by the clerk. Any individual or firm selected to transcribe the record pursuant to Rule 8(b)(3) is hereinafter called 'the transcriber.'~~

~~If the appellant has designated the entire cassette for transcription, then within said fifteen days of receipt of the cassette from the clerk, appellant shall also send or deliver to the transcriber the cassette provided by the clerk and a written order designating the entire cassette for transcription. If the appellant has not designated the entire cassette, then after twenty days have expired from the service upon the appellee of appellant's designation of transcript, the appellant shall promptly send or deliver to the transcriber the cassette provided by the clerk and a written order which states those parts of the cassette designated by the parties for transcription. In addition, the order, whether for all or part of the transcript, shall include a statement that the original of the designated portions of the transcript should be sent to the clerk of the lower court, and shall indicate the number of copies, if any, to be sent to the appellant. The appellant shall promptly file with the clerk and serve on the other parties a copy of the order placed with the transcriber. Unless the entire cassette is to be transcribed, the appellant shall,~~

together with appellant's designation of transcript, file and serve on the appellee a statement of the issues the appellant intends to present on the appeal.

~~The appellant shall cooperate with the transcriber by providing such information as is necessary to facilitate transcription, and, where the Commonwealth is not responsible for the cost of transcription, make satisfactory arrangements with the transcriber to pay for the trial court's original of the designated portions of the transcript and any copies ordered by the appellant for the appellant's own use.~~

~~(iii) Duties of the Appellee. If the appellee deems it necessary to have a cassette in order to consider counter-designating, or for any other purpose, the appellee shall, after receipt of the notice of appeal, promptly order the cassette from the clerk or promptly arrange with the appellant to use appellant's cassette. If the appellant has not designated and ordered the entire transcript and if the appellee deems a transcript of other portions of the proceedings to be necessary, the appellee shall within fifteen days after receipt of the appellant's designation, file in court, and serve on the appellant, a designation of such additional parts. The designation of the parts of the cassette to be transcribed should be precise and include such details as the name of the witness whose testimony has been designated and the specific portions to be included, giving an exact quote of the beginning words and concluding words of each designated portion. If the appellant shall refuse to order such parts, the appellee shall either order the parts or apply to the lower court for an order requiring the appellant to do so. If the appellee desires a copy of designated portions of the transcript, the appellee shall promptly communicate to the transcriber the number of copies wanted and, in cases where the Commonwealth is not responsible for the cost of the transcript, make satisfactory arrangements with the transcriber for payment for the appellee's own copies.~~

~~The appellee shall cooperate with the transcriber by providing such information as is necessary to facilitate transcription.~~

~~(iv) Duties of the Transcriber. The transcriber shall prepare an original typed transcript of the designated portions and the requested number of copies, in accordance with the designations, and shall deliver said original to the clerk, with the following certificate of accuracy:~~

I, _____, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, of the designated portions of the cassette provided to me by the appellant or appellee of a trial or hearing of the _____ Division of the _____ Court Department in the proceedings of _____

On receipt of the order the court reporter shall prepare an original typed transcript for filing with the lower court and a copy for the appellant and any party who so requests. The court reporter shall deliver the original to the clerk of the lower court who shall immediately notify all parties of its receipt, and the court reporter shall deliver legible copies to the appellant and to any party who so requests.

(ii) Electronically Recorded Proceedings

(a) Applicability: Rule 8(b)(5)(ii) applies to child welfare cases which were recorded electronically on equipment under the control of the court and which were not recorded by an official court reporter. If, however, a complete transcript of the electronic recording has been produced for use by the lower court, and it or a copy is available to the parties, that transcript or copy shall be used.

(b) Duties of the Appellant and Clerk. Upon the filing of a notice of appeal, the clerk of the lower court shall produce a cassette copy of the electronic recording. Within 10 days of production of the cassette, the clerk of the lower court shall, unless the parties file a stipulation designating the parts of the cassette which need not be transcribed, on behalf of the appellant order a transcription of the entire cassette from a transcriber selected by the clerk in accordance with procedures promulgated by the Chief Justice for Administration and Management. The clerk shall also notify all parties of the name of the transcriber and the date the cassette was sent for transcription by sending a copy of the order form to all parties.

On receipt of the order the transcriber shall prepare an original typed transcript for filing in the lower court and a copy for the appellant and any party who so requests. The transcriber shall deliver the original to the clerk of the lower court who shall immediately notify all parties of its receipt, and the transcriber shall deliver legible copies to the appellant and to any party who so requests. The appellant and appellee shall cooperate with the transcriber by providing information necessary to facilitate transcription.

The transcriber shall certify the original transcript using the following certificate of accuracy:

I, _____, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, of the designated portions of the cassette provided to me by the clerk of the lower court of a trial or hearing of the _____ Division of the

_____ Court Department in the proceedings of _____, case(s)
no(s). _____ before Justice _____ on _____.

_____ Date: _____

_____ Transcriber's Signature

~~(iii) Unintelligible Portions of the Cassette. If portions of the cassette cannot be transcribed because they are unintelligible, the parties shall promptly use reasonable efforts to stipulate their content. If agreement cannot be reached, the parties shall promptly present their differences as to such portions to the trial judge who heard the testimony. The trial judge shall, if possible, settle the content of the unintelligible portions, which shall then be included in the transcript.~~

~~(iv) Costs. The appellant shall pay for the cost of the original transcript filed with the lower court and for any copies ordered by the appellant. If there is more than one appellant, the cost of the original and any copies shall be divided between the various appellants. Any other party who requested a copy of the transcript shall pay for its copy. For any party for whom counsel is made available pursuant to Supreme Judicial Court Rule 3:10, the cost of any transcript requested by, or on behalf of, such party shall be paid in accordance with G.L. c. 261.~~

~~(c) Statement of the Evidence or Proceedings When No Report or Transcript Was Made or When the Transcript Is Unavailable is Available. If no report of the evidence or proceedings at a hearing or trial was made, or if and a transcript is unavailable, the appellant shall file a motion to reconstruct the record within 14 days of the filing of the notice of appeal. The parties shall confer and reconstruct the record. Within such time as the lower court shall allow, the appellant may shall file a proposed statement of the proceedings, within thirty days after the notice of appeal is filed, file a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may file objections or proposed amendments thereto wWithin ten 14 days after of service of the proposed statement, any other party may file objections or proposed amendments or additions. The lower court shall promptly settle any disputes and approve a statement of the proceedings for inclusion in the record on appeal. Thereupon the statement and any objections or proposed amendments thereto shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal.~~

~~(d) Agreed Statement as the Record on Appeal. If the parties intend to submit an agreed statement as the record on appeal in lieu of the procedures set forth in Rule 8(a)-(c), the parties shall notify the clerk in writing within 14 days of the filing of the notice of appeal. Within 28 days of the filing of the notice to the clerk, the parties shall submit to the lower~~

court an agreed statement of the record on appeal containing such information as is necessary for consideration of the appeal. If the statement conforms to the truth, the lower court shall approve the statement, along with any additions the lower court considers useful to the appellate court. ~~In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may, within thirty days after the notice of appeal is filed, prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the lower court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the lower court, and as approved shall be retained in the lower court as the record on appeal.~~

~~Copies of the agreed statement shall be filed as the appendix required by Rule 18.~~

(e) Correction or Modification of the Record.

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

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

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

~~If any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court, either before or after the record is transmitted to the appellate court, or the appellate court, or a single justice, on proper suggestion or on its own motion, may direct that the omission or misstatement be corrected, and if necessary~~

~~that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to a single justice.~~

Rule 9. Assembly of the Record; Reproduction of Exhibits; Notice of Assembly; and Transmission of Documents from the Lower Court ~~of the Record: Exhibits~~

(a) Assembly.

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

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

~~The clerk of the lower court as soon as may be after the filing of the notice of appeal shall place together all the original papers including the exhibits filed in the lower court, together with such other papers as thereafter become a part of the record pursuant to Rule 8. The papers shall be numbered in the order of filing and the exhibits shall be plainly marked with the number assigned in the lower court preceded by the letters "exh.". The clerk shall append to the record a list of the documents correspondingly numbered and identified with reasonable definiteness. The record so assembled by the clerk shall be suitably spindled, bound, or tied and retained by the clerk in this form until the final disposition of the appeal, except as the record or any part of it is ordered to be transmitted by the appellate court or a single justice.~~

~~(b) Exhibits. No exhibit need be reproduced for the record, except by order of an appellate court, a single justice, or the judge of the lower court. Any counsel may reproduce any exhibit in several copies for the convenience of the court. The lower court shall make such orders as it deems necessary for the preservation of exhibits, and for the reproduction of important exhibits which the appellate court should examine, and the clerk of the lower court shall not transmit any exhibit to the appellate court at the request of any party made at any time after the filing of the record appendix. A party shall make advance arrangements with the clerk of the lower court for the transmission and receipt of exhibits of unusual bulk or weight. No exhibit consisting of currency, bearer securities, firearms, narcotics, or contraband articles shall be transmitted to an appellate court unless pursuant to an order of the full appellate court or a justice thereof. The~~

parties may reproduce exhibits for inclusion in the record appendix insofar as necessary to their appeal, pursuant to Rule 18.

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

(ed) Appellant's Obligation.

(1) In General. In a civil or criminal case, upon request ~~of a party~~ by the clerk of the lower court, ~~the a party~~ shall forthwith perform any act reasonably necessary to enable the clerk to assemble the record ~~and the clerk shall assemble a single record. The lower court or the appellate court or a single justice thereof may require the record to be assembled and the appeal to be docketed at any time.~~

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

(~~i~~**A**) a transcript ~~of or~~ those portions of the transcript of the lower court proceedings which the appellant deems necessary for determination of the appeal,

(~~ii~~**B**) a signed statement certifying that the appellant has ordered such portions ~~from the court reporter,~~ or

(~~iii~~**C**) a signed statement certifying that the ~~appellate~~**appellant** has not ordered and does not intend to order the transcript or any portion thereof.

~~Upon receiving the transcript, the appellant in a civil case shall forthwith deliver it to the clerk of the lower court.~~

(3) Denial of Motion for Post-Conviction Relief in a Criminal Case. Excepting an appellant in a criminal case in which the defendant was convicted of murder in the

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

(de) Duty of Clerk; Transmission.

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

(A) within 21 days from the later of

(i) the clerk's receipt of the transcript of proceedings, if any, in the lower court; or

(ii) the clerk's receipt of notice from the appellant that no transcript will be ordered; or

(iii) the expiration of the time for filing any other notice of appeal after the filing of a first notice of appeal pursuant to Rule 4(a); or

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

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

(A) a completed appellate court entry statement;

(B) a copy of the notice of assembly issued to the parties;

(C) a copy of the notice(s) of appeal;

~~(D) and shall transmit to the appellate court two a certified copies copy of the docket entries;~~

(E) the written notification regarding impounded materials as required by Rule 9(c);

(F) a list of all the exhibits; and,

~~(G) in a criminal cases, the original and one copy of the any electronically formatted transcript, if a transcript is necessary for the appeal and a list of all the exhibits.~~

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

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

~~(e) Record for Preliminary Hearing in the Appellate Court. If prior to the time the record is assembled a party desires to make in the appellate court a motion for dismissal, for a stay pending appeal or for any intermediate order, the appellate court or a single justice may, on its own motion or on motion of any party, with or without notice, order the clerk of the lower court to transmit to the appellate court such parts of the original record as the appellate court or the single justice shall deem appropriate.~~

Rule 10. Docketing the Appeal

(a) Docketing the Appeal.

(1) Civil Cases.

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

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

(2) Criminal Cases. Upon receipt of **the** notice of assembly of the record, pursuant to Rule 9(~~de~~), ~~or of approval by the lower court of an agreed statement, pursuant to Rule 8(d),~~ the clerk of the appellate court shall enter the appeal upon the docket.

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

(4) Certain Constitutional Claims. Within 14 days after the docketing of any civil appeal that draws into question the constitutionality of an act of the legislature, if neither the Commonwealth nor an officer, agency, or employee thereof is a party to the appeal, the party asserting the unconstitutionality of the act shall notify the attorney general of such challenge. If such a question becomes apparent to a party after the 14-day period has expired, the party shall immediately notify the attorney

general. Such notice shall be given either in writing or by use of any electronic method the attorney general may designate for this purpose.

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

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

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

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

(c) Dismissal for Failure of Appellant in a Civil Case to Comply With Rule 9(~~ed~~) or Rule 10(a). If any appellant in a civil case shall fail to comply with Rule 9(~~ed~~) or Rule 10(a)(1)-~~or (3)~~, the lower court may, on motion with notice by any appellee, dismiss the appeal, but only upon a finding of inexcusable neglect; otherwise, the court shall enlarge the appellant's time for taking the required action. If, prior to the lower court's hearing such motion for noncompliance with Rule 9(~~ed~~), the appellant shall have cured the noncompliance, the appellant's compliance shall be deemed timely.

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

Rule 11. Direct Appellate Review

(a) Application; When Filed; Grounds. An appeal within the concurrent appellate jurisdiction of the Appeals Court and Supreme Judicial Court shall be ~~entered~~**docketed** in the Appeals Court before a party may apply to the Supreme Judicial Court for direct appellate review. Within ~~twenty~~**21** days after the docketing of an appeal in the Appeals Court, any party to the case (or ~~two~~**2** or more parties jointly) may apply in writing to the Supreme Judicial Court for direct appellate review, provided the questions presented by the appeal are: (1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. ~~Oral argument in support of an application will not be permitted except by order of court.~~

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

(c) ~~Opposition~~**Response**; Form. Within ~~ten~~**14** days after the filing of the application, any other party to the case may, but need not, file and serve ~~an opposition~~**a response** thereto (~~covering~~**consisting of** not more than ~~either ten~~**either 10** pages of ~~typing~~**text in monospace font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B))** setting forth reasons why the application should **or should** not be granted. The ~~opposition~~**response** shall not restate matters described in ~~subdivision~~**Rule 11(b)(2) and (3) of this rule** unless the ~~opposing~~ party is dissatisfied with the statement thereof contained in the application. The ~~opposition~~**response** shall comply with the requirements of Rule 20(a), **and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was**

ascertained, as specified in Rule 16(k). A response may be filed in a different form as permitted by the court.

(d) Filing; Service. ~~One copy of the application and one copy of each opposition shall be filed in the office of the clerk of the Appeals Court. An original and seventeen copies~~ **One copy** of the application and of each ~~opposition~~ **response** shall be filed in the office of the clerk of the full Supreme Judicial Court. Filing and service of the application and of any ~~opposition~~ **response** shall comply with Rule 13.

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

(f) Vote of Direct Appellate Review; Certification. If any ~~two~~ **2** justices of the Supreme Judicial Court vote for direct appellate review, or if a majority of the justices of the Appeals Court shall certify that direct appellate review is in the public interest, an order allowing the application (or transferring the appeal sua sponte) or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court **with notice to the lower court**; ~~upon receipt, direct appellate review shall be deemed granted.~~ The clerk **of the Appeals Court** shall forthwith transmit to the clerk of the full Supreme Judicial Court all ~~papers~~ **documents** ~~theretofore~~ filed in the case ~~and shall notify the clerk of the lower court that the appeal has been transferred.~~

(g) Cases Transferred for Direct Review; Time for Serving and Filing Briefs. In any appeal transferred to the full Supreme Judicial Court from the Appeals Court:

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

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

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

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

Rule 11.1. Transfer from Supreme Judicial Court

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

~~No oral argument will be permitted.~~

Rule 12. Proceedings ~~in Forma Pauperis~~ **Involving an Indigent Party**

(a) Leave to Proceed on Appeal ~~In Forma Pauperis~~ **as an Indigent Party** From Lower Court to Appellate Court. Either a lower court or **the appellate court or** a single justice **thereof**, for cause shown and after reasonable notice, may authorize an appeal to be prosecuted ~~in forma pauperis~~ **by an indigent party**, upon such reasonable terms as such court or justice may prescribe.

(b) Form of Briefs, Appendices, and Other ~~Papers~~ **Documents**. Parties allowed to proceed ~~in forma pauperis~~ **as indigent** may **upon motion and with leave of the appellate court or a single justice thereof**, file **and serve a reduced number of copies of** briefs, appendices, and other ~~papers documents~~ **than otherwise required by these rules** ~~in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.~~

Rule 13. Filing and Service

(a) Filing. ~~Papers~~ **Documents** required or permitted to be filed in the appellate court shall be filed with the clerk.

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

~~(iA)~~ received within the time fixed for filing, or

~~(iiB)~~ **when filed by first class mail or its equivalent, they are** accompanied by ~~an affidavit~~ **a certificate** attesting that the day of mailing was within the time fixed for filing.

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

(2) Documents Filed by a Self-Represented Party Confined in an Institution. **If an institution has a system designed for legal mail, a self-represented party confined in an institution must use that system to receive the benefit of this rule. A document other than a notice of appeal filed by such party is timely if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a signed certificate in compliance with Rule 13(a)(1)(B) setting out the date of deposit. If the document is not received by the last day for filing, the certificate shall give rise to a presumption of timely filing provided it shows compliance with this rule. Failure to attach the certificate shall not of itself render the document invalid or untimely, and the appellate court may permit the later filing of a certificate. The time period for the opposing party to file any response to the document runs from the date when the appellate court docket the document.**

(b) Service of All ~~Papers~~ **Documents** Required. Copies of all ~~papers~~ **documents** filed by any party ~~and not required by these rules to be served by the clerk~~ shall, at or before the time of filing, be served by a party ~~or person acting for him~~ on all other parties to the appeal or review. ~~Service on a party represented by counsel shall be made on counsel.~~

(c) Manner of Service. Service may be personal or by first class mail **or its equivalent**. Personal service includes delivery of the copy to **the party's mailing address** ~~a clerk or other responsible person at the office of counsel~~. Service by first class mail **or its equivalent** is complete on mailing. **Service may also be completed electronically with the consent of the party being served.**

(d) ~~Proof Certificate~~ **of Service of All Documents Other than Briefs and Appendices.**

(1) Requirement. ~~Papers~~**Documents** presented for filing, **other than a brief or appendix**, shall contain ~~an acknowledgement of service by the person served or proof a certificate of service in the form of a statement under the penalties of perjury of the date and manner of service and of the name of the person served, signed by the person who made service.~~ **A certificate** of service may appear on or be affixed to the ~~papers~~**document** filed. The clerk may permit ~~papers~~**documents** to be filed without ~~acknowledgement or proof~~**a certificate** of service but shall require such ~~acknowledgement or proof~~**certificate** to be filed promptly thereafter.

(2) Contents. A certificate of service shall be in the form of a statement certifying

(A) the date and manner of service;

(B) the name, mailing address, and, if known, electronic address of the person(s) served; and

(C) the printed and signed name, Board of Bar Overseers (BBO) number, if any, mailing and electronic addresses, and telephone number of the person who made service, and if that person is affiliated with a firm or office, the office name.

(e) **Certificate of Service of Briefs and Appendices.**

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

(2) Contents. The certificate of service shall be in the form of a certification that includes

(A) the name of the court and the number of the case;

(B) the title of the case;

(C) the title of the brief;

(D) the party on whose behalf service was made;

(E) the printed and signed name, Board of Bar Overseers (BBO) number, if any, mailing and electronic addresses, and telephone number of the person who made service, and, if that person is affiliated with a firm or office, the office name;

(F) the name and mailing address and, if known, electronic address of the person(s) served; and

(G) the date and manner of service.

Rule 14. Computation and Extension of Time

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

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

(c) **Additional Time After Service by First Class Mail or Its Equivalent.** Whenever a party is required or permitted to do an act within a prescribed period after service of a ~~paper~~ **document** upon ~~him~~ **the party** and the ~~paper~~ **document** is served by **first class mail or its equivalent**, 3 days shall be added to the prescribed period.

Rule 15. Motions

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

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

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

(d) Motions for New Trial in Capital Cases. After the docketing of an appeal in a ~~criminal case in which the defendant was convicted of murder in the first degree~~ **“capital case” as defined in G. L. c. 278, § 33E**, and until the ~~issuance~~ **issuance** of a rescript by the appellate court, **any** motion for a new trial pursuant to Massachusetts Rules of Criminal Procedure 30 shall be filed in the appellate court and may be remitted to the trial judge for hearing and determination at such time as the appellate court may direct.

Rule 16. Briefs

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

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

(2) Corporate Disclosure Statement. A corporate disclosure statement, if required pursuant to Supreme Judicial Court Rule 1:21, shall be contained within the brief.

(3) Table of Contents. The table of contents shall list each section of the brief, including the headings and subheadings of each section, and the page on which they begin, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

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

(5) Statement of the Issues presented for review. The statement of issues shall concisely and particularly describe each issue presented for review.

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

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

(8) Summary of Argument. In a brief with more than twenty-four 20 pages of argument, or more than 4,500 words if produced in a proportionally spaced font, there shall be a short summary of the argument, that contains a succinct, clear, and

accurate statement of the arguments made in the body of the brief, which must not merely repeat the argument headings, and is to include page references to where in the body of the brief each argument is made. ~~suitably paragraphed and with page references to later material in the brief dealing with the same subject matter, which should be a condensation of the argument actually made in the body of the brief, and not a mere repetition of the headings under which the argument is arranged.~~

(49) Argument. The argument, ~~which~~ shall contain:

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

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues). ~~relied on. In a brief with more than twenty-four pages of argument, there shall be a short summary of argument, suitably paragraphed and with page references to later material in the brief dealing with the same subject matter, which should be a condensation of the argument actually made in the body of the brief, and not a mere repetition of the headings under which the argument is arranged. The appellate court need not pass upon questions or issues not argued in the brief. Nothing argued in the brief shall be deemed to be waived by a failure to argue orally.~~

~~(5) A short conclusion stating the precise relief sought.~~

(10) Request for Attorney's Fees and Costs. Any request for appellate attorney's fees and costs must be included in the brief, with a citation to the authority therefor.

(11) Conclusion. The brief shall contain a short conclusion stating the precise relief sought.

(12) Signature Block. The signature block shall contain

(A) the printed and signed name(s), Board of Bar Overseers (BBO) number(s), if any, mailing and electronic addresses, and telephone number(s) of the person(s) who prepared the brief, and, if any individual counsel is affiliated with a firm or office, the office name; and

(B) the date of signing.

(613) Addendum. An addendum, contained within the brief, shall consist of the following:

(A) a table of contents listing each item contained therein and the page on which it begins;

(B) Any appealed judgment or order (including any written opinion, ~~or oral findings or~~ memorandum of decision, or findings of fact and conclusions thereon relating by the court pertinent to an issue raised on appeal, included as an addendum to the brief including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court);

(C) copies of constitutional provisions, statutes, rules, regulations, or relevant parts thereof, as in effect at the relevant time, consideration of which is required for determination of the issues presented;

(D) a copy of any unpublished decision cited in the brief; and

(E) in a case where geographical facts are of importance, unless appropriate plans are reproduced in the printed record or record appendix, an outline plan (preferably based on exhibits in evidence). This outline plan should be suitable for reproduction on one 1 page of the printed law reports.

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

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

~~(7) In cases where geographical facts are of importance, unless appropriate plans are reproduced in the printed record or record appendix, an outline plan or chalk (preferably based on exhibits in evidence) shall be included. This outline plan should be suitable for reproduction on one 1 page of the printed law reports.~~

~~(8) The printed names, Board of Bar Overseers (BBO) numbers, addresses, and telephone numbers of individual counsel, and, if an individual counsel is affiliated with a firm, the firm name.~~

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision ~~Rule 16(a)(1)-(4) and (7)~~, except as follows: that

(1) Statements of the Issues, Case, Facts, and Standard(s) of Review. ~~a s~~Statements of the issues ~~or of~~, of the case, of the facts, and of the applicable standard(s) of review need not be made unless the appellee is dissatisfied with the statements of the appellant.

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

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

(c) **Appellant's Reply Brief.** The appellant may file a **reply** brief ~~in reply~~ **responding** to the ~~brief of the~~ appellee's argument. **No new issues shall be raised in the reply brief.** ~~and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal.~~ No further briefs may be filed except with leave of the appellate court **or a single justice.** ~~The R~~reply briefs shall comply with the requirements of Rule 16 (a)(1), **(3), (4), (9), and (11)-(15).**

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

(e) **References in Briefs to the Record.** **Any factual statement in a brief shall be supported by a citation to the volume number(s) and page number(s) at which it appears in an appendix, and if not contained in an appendix, to the volume number(s) and page number(s) at which it appears in the transcript(s) or exhibits volume(s). Only clear abbreviations may be used, for example, RAII/55 (meaning Record Appendix volume II at page 55) or TRIII/231-232 (meaning Transcript volume III at pages 231-232). Any record material cited in a brief must be reproduced in an appendix or transcript or exhibit volume. Any record material cited in a brief that is included in the addendum should also include a citation to the addendum.** ~~References in the briefs to parts of the record reproduced in an appendix filed with the brief (see Rule 18(a)) shall be to the pages of the appendix at which those parts appear. If~~

~~the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by Rule 18(e). If the record is reproduced in accordance with the provisions of Rule 18(f), or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected. No statement of a fact of the case shall be made in any part of the brief without an appropriate and accurate record reference.~~

~~(f) **Reserved.** Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires consideration of constitutional provisions, statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end.~~

(g) **Massachusetts Citations. Citations to Massachusetts decisions, statutes, and regulations shall be made only to the official report of the decision or to the official publication containing the statute or regulation, if any.** ~~Massachusetts Reports between 17 Massachusetts and 97 Massachusetts shall be cited by the name of the reporter. Any other citation shall include, wherever reasonably possible, a reference to any official report of the case or to the official publication containing statutory or similar material. References to decisions and other authorities should include, in addition to the page at which the decision or section begins, a page reference to the particular material therein upon which reliance is placed, and the year of the decision; as, for example: 334 Mass. 593, 597-598 (1956). Quotations of Massachusetts statutory material shall include a citation to either the Acts and Resolves of Massachusetts or to the current edition of the General Laws published pursuant to a resolve of the General Court.~~

(h) **Length of Briefs in Cases Other than Cross Appeals. In any case other than a cross appeal, the length of briefs shall comply with Rule 20(a)(2).** ~~Except by permission of the court, principal briefs shall not exceed fifty pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. Except by permission of the court, reply briefs shall not exceed twenty pages. Permission of the court shall not be granted unless the moving party specifies the relevant issue or issues and why such issues merit additional pages. A motion of a party to exceed the page limits stated in this rule will not be granted except for extraordinary reasons.~~

(i) **Briefs in Cases Involving Cross Appeals.** ~~If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 18 and 19, unless the parties otherwise agree or the court otherwise orders. In a cross appeal,~~

(1) the length of briefs shall comply with Rule 20(a)(3);

(2) ~~The brief of the~~ **appellee's principal and response brief** shall contain the issues and argument involved in ~~his~~ **the appellee's** appeal as well as the answer to the brief of the appellant;

(3) the appellee may file a reply brief responding to the appellant's argument as to the issues presented by the cross appeal; and

(4) except with leave of the appellate court or a single justice, an appellee that has cross-appealed may file only a single brief in reply to the responses of multiple appellants to the issues presented by the cross appeal.

(j) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal **per Rule 10(a)(5)**,

(1) any number of either may join in a single brief or reply brief, provided appropriate notice is given to the clerk and other parties;

~~(2) and any appellant or appellee may adopt by reference any part of the brief of another;~~
~~Parties may similarly join in reply briefs.~~ **and**

(3) except with leave of the appellate court or a single justice, an appellee may file only a single brief in response to multiple appellant briefs, and an appellant may file only a single brief in reply to multiple appellee briefs.

(k) Required Certification; Non-complying Briefs. The last page of each brief shall include a certification by ~~counsel, or, if a party is proceeding pro se,~~ by the party, that the brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: ~~Mass. R. A. P. Rule 16(a)(613) (addendum pertinent findings or memorandum of decision); Mass. R. A. P. Rule 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. Rule 18 (appendix to the briefs); and Mass. R. A. P. Rule 20 (form and length of briefs, appendices, and other papers/documents); and Rule 21 (redaction).~~ **The certification shall specify how compliance with the applicable length limit of Rule 20 was ascertained, by stating either (1) the name, size, and number of characters per inch of the monospaced font used and the number of non-excluded pages, or (2) the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used.** A brief not complying with these rules (including a brief that does not contain a certification) may be struck from the files by the appellate court or a single justice.

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

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

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

Rule 17. Brief of an Amicus Curiae

(a) General. A brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion or (2) ~~at the request of~~ **when solicited by** the appellate court, except that ~~consent or leave shall not be required when the brief is presented by the Commonwealth or its officer or agency.~~ The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(b) Timing. ~~In all cases, an Any~~ amicus curiae shall file its brief **no later than 21 days before the date of oral argument for that case** ~~within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the appellate court or a single justice for cause shown shall grant leave for later filing.~~ **Any party may request leave from the appellate court or a single justice to file a response to a brief filed by an amicus curiae.** ~~and shall specify within what period an opposing party may answer.~~

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

(1) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Supreme Judicial Court Rule 1:21;

(2) a table of contents with page references, in accord with Rule 16(a)(3);

(3) a table of authorities, in accord with Rule 16(a)(4);

(4) a concise statement of the identity of the amicus curiae and its interest in the case;

(5) unless the brief is presented by the Commonwealth or its officer or agency, a declaration that indicates whether

(A) a party or a party's counsel authored the brief in whole or in part;

(B) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief;

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

(D) the amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal, and, if so, identifying the proceeding or transaction, its relevance to the present appeal, and the parties involved;

(6) a summary of argument, in accord with Rule 16(a)(8), if the argument is more than 20 pages in length or more than 4,500 words if produced in a proportionally spaced font;

(7) an argument, which need not include a statement of the applicable standard of review;

(8) a signature block, in accord with Rule 16(a)(12);

(9) a certificate stating that the brief complies with the requirements of this rule and Rule 20 and specifying how compliance with the length limit of Rule 20(a)(3)(E) was ascertained, by stating either (A) the name, size, and number of characters per inch of the monospaced font used and the number of non-excluded pages, or (B) the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used; and

(10) a certificate of service, in accord with Rule 13(e).

A brief not complying with these rules (including a brief that does not contain a certification) may be struck from the files by the appellate court or a single justice. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

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

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

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

(a) Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies. The appellant shall prepare and file an appendix to the briefs **which shall be separately bound. The parties are cautioned that, under Rule 9, the lower court does not ordinarily transmit the entire record to the appellate court. Therefore, the appendix or appendices must include the items specified in this rule.**

(1) Requirements in Civil and Criminal Cases.

(A) The appendix shall contain, in the order hereinafter provided:

(i) a cover that conforms substantially to Rules 20(a)(5)(A) and (a)(6).

(ii) a table of contents, listing the parts of the record reproduced therein, and including a detailed listing of exhibits, affidavits, and other documents associated with those parts, with references to the pages of the appendix at which each begins;

(iii) the docket entries in the lower court proceedings;

(iv) any order of impoundment or confidentiality from the lower court; and

(v) in chronological order of filing in the lower court:

(a) any parts of the record relied upon in the brief, and in a criminal case, a copy of the complaint or indictment;

(b) any document, or portion thereof, filed in the case relating to an issue which is to be argued on appeal;

(c) any findings or memorandum of decision or order by the lower court pertinent to an issue on appeal, including a typed version of any pertinent handwritten or oral endorsement, notation, findings, or order made by the lower court;

(d) the judgment, decree, order, or adjudication in question; and

(e) the notice(s) of appeal.

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

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

(D) The court may decline to permit the parties to refer to portions of the record omitted from the appendix, but the fact that parts of the record are not included in the appendix shall not prevent the court from relying on such parts.

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

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

(2) Additional Requirements in a Criminal Case.

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

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

~~In civil cases, the appendix shall contain: (1) the relevant docket entries in the proceedings below; (2) any relevant portions of the pleadings, charge, findings, or opinion; (3) the judgment, order, or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law in the lower court should not be included in the appendix.~~

~~In criminal cases, the appendix need not contain relevant portions of the transcript, but shall contain: (1) the relevant docket entries in the proceedings below; (2) a copy of the complaint or indictment; and (3) any paper filed in the case relating to an issue which is to be argued on appeal. Any party in a criminal case may include in an appendix to his brief any other parts of the record to which he wishes to direct the particular attention of the court.~~

~~The appendix shall include any order of impoundment or confidentiality from the lower court. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts, provided that the court may decline to permit the parties to refer to portions of the record omitted from the appendix, unless leave be granted prior to argument.~~

~~Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, any appendix shall be filed and served with the brief. If separately bound, the same number of copies of the appendix shall be filed with the clerk as required by Rule 19(b) for the filing of the brief, and two shall be served on counsel for each party separately represented, unless the court shall by rule or order direct the filing or service of a lesser number and except as otherwise provided in subdivision (c) of this rule.~~

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

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

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

(3) Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented **the appellant** may so advise the appellee and the appellee shall advance the cost of including such parts. In the event of a dispute as to the parts to be included or the **cost** advance required to include them, the matter shall be settled by the lower court on motion and notice. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on the party.

~~(c) Alternative Method of Designating Contents of the Appendix in Civil Cases; How References to the Record May Be Made in the Briefs When Alternative Method Is Used. In civil cases, if the appellant shall so elect—with leave of the appellate court or a single justice—preparation of the appendix may be deferred until after the briefs have been filed and the appendix may be filed twenty one days after service of the brief of the appellee. Notice of the election by the appellant to defer preparation of the appendix shall be filed and served by him within ten days after the date on which the clerk notifies the parties that the record has been assembled. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 18 shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.~~

~~If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in his brief directly to pages of the appendix, he may serve and file typewritten or page-proof copies of his brief within the time required by Rule 19(a), with appropriate references to the pages of the parts of the record involved. In that event, within fourteen days after the appendix is filed he shall serve and file copies of the brief in the form prescribed by Rule 20(a) containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.~~

~~(d) Arrangement of the Appendix. The pages of the appendix shall be consecutively numbered and the parts of the record which are reproduced therein shall be set out in chronological order. The appendix shall commence with a chronologically ordered list of the parts of the record which it contains, with references to the pages of the appendix at which each part begins. When an appendix relates to two or more cases or to more than two parties, the appendix shall indicate~~

~~the case to which each paper belongs and by whom it was filed. Unless the party filing the appendix reproduces the entire transcript of testimony,~~

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

(1A) the witness whose testimony is being reproduced;

(2B) the party originally calling ~~him~~ **the witness**;

(3C) the party questioning ~~him~~ **the witness**; ~~and~~

(4D) the classification of ~~his~~ **the witness's** examination (direct, cross, or other);
and

(E) the transcript volume and page number from which the reproduced testimony is derived.

~~When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page number of the original transcript at which such matter may be found may be indicated in brackets immediately before the matter which is set out, unless it already appears on the matter as set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) may be omitted. A question and its answer may be contained in a single paragraph.~~

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

(A) be filed and served with the brief pursuant to Rules 18(f) and 19, unless otherwise ordered;

(B) include only materials that are part of the record;

(C) not generally include materials already in the appellant's appendix, unless necessary for context; and

(D) be in the form prescribed by Rules 18(a)(1) and 20(a)(5) and (a)(6).

~~(ec) Reproduction of Exhibits and Transcripts in Civil Cases. In a civil case, Exhibits and transcripts or portions thereof in civil cases, designated shall be reproduced for inclusion in the appendix consistent with Rule 18(b)(4), may be contained in separate volumes, suitable indexed.~~

~~(1) Appeals Court. On appeals to the Appeals Court, five copies of the exhibits volume or volumes, and two copies of the transcript volume or volumes shall be filed with the appendix and one copy of each shall be served on counsel for each party separately represented.~~

~~(2) Supreme Judicial Court. On appeal to the Supreme Judicial Court, and on further appellate review, five copies of the exhibits volume or volumes and five copies of the transcript volume or volumes shall be filed with the appendix and one copy of each shall be served on counsel for each party separately represented.~~

~~(3) Appeals transferred to the Supreme Judicial Court from the Appeals Court. In any appeal transferred to the full Supreme Judicial Court, in which copies of the exhibits and transcripts have already been filed in the Appeals Court pursuant to this rule, three additional copies of the transcript volume or volumes shall be promptly filed with the clerk of the Supreme Judicial Court, unless the court by order in a particular case shall direct a lesser or greater number.~~

~~(f) Hearing of Appeals on the Original Record Without the Necessity of an Appendix. On motion, the appellate court or a single justice may, in specific cases, dispense with the requirement of an appendix and permit appeals to be heard in whole or in part on the original record, with such copies of the record, or relevant parts thereof, as the court may require.~~

(gd) Reproduction of Impounded Materials. If the entire case has been impounded, the cover of the appendix shall clearly indicate that the appendix is impounded. If the entire case has not been impounded, a separate appendix volume shall be filed containing the impounded material **and a copy of any lower court order(s) impounding the material**, and the cover thereof shall clearly indicate that it contains impounded material.

(e) Reproduction of electronic audio or audiovisual exhibit. At the time of filing an appendix containing a reproduction of an electronic audio or audio-visual exhibit that was

part of the lower court record, the filing party shall file a written notice with the clerk, with a copy of the notice sent to all parties, so indicating the inclusion of such reproduction, and specifying the form in which it is reproduced.

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

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

Rule 19. Filing and Serving of Briefs, Appendices, and **Certain** Motions

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

Except as provided in ~~section~~ **Rule 19(cd) (first degree murder appeals)**, ~~of this rule, and in Rule 11(g)(4) concerning the filing of briefs on (direct appellate review), and in Rule 27.1(f) concerning the filing of briefs on (further appellate review),~~ **the following briefs and appendices shall be due as stated below:-**

(1) Appellant Brief and Appendix. ~~the~~The appellant shall serve and file ~~his~~ a brief **and appendix** within 40 days after the date on which the appeal is docketed in the appellate court.

(2) Appellee Brief. The appellee shall serve and file ~~his~~ a brief within ~~thirty~~ **30** days after service of the brief of the appellant **(or, in the case of multiple appellants, service of the last appellant brief).**

(3) Reply Brief. **Except by leave of court, any reply brief must be served and filed by the earlier of**

(A) 14 days after service of the brief of the appellee (or, in the case of multiple appellees, service of the last appellee brief), or

(B) 7 days before argument. ~~The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee, but, except by leave of the appellate court or a single justice, for good cause shown, a reply brief must be filed at least three days before the first day of the sitting at which the case is in order for argument.~~

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

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

(1) Appellant's Principal Brief and Appendix. The appellant/cross-appellee shall serve and file a brief and appendix within 40 days after the date on which the appeal is docketed in the appellate court.

(2) Appellee's Principal and Response Brief and Appendix. The appellee/cross-appellant shall serve and file a brief and appendix within 30 days after service of the brief and appendix of the appellant (or, in the case of multiple appellants, service of the last appellant brief).

(3) Appellant's Response and Reply Brief. The appellant/cross-appellee reply brief must be served and filed within 30 days after service of the brief of the appellee/cross-appellant.

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

(dc) Rule for Appeals Pursuant to Massachusetts General Laws Chapter 278, sec. § 33E. Time for Serving and Filing Briefs, Appendices, and Motions for New Trial in First Degree Murder Appeals.

(1) In the case of a direct appeal by an appellant who has been convicted of first degree murder, the appellant shall within ~~one hundred and twenty~~ **120** days after the date on which the appeal is docketed in the Supreme Judicial Court: ~~(1A)~~ serve and file the appellant's brief **and appendix**; ~~(2B)~~ serve and file a motion for a new trial; or ~~(3C)~~ for good cause shown, seek a further enlargement of time for filing a brief **and appendix** or a motion for a new trial. The Commonwealth shall serve and file its brief within ~~ninety~~ **90** days after service of the brief of the appellant. The appellant may serve and file a reply brief within the ~~thirty~~ **30** days after service of the brief of the Commonwealth.

(2) If **during the pendency of the direct appeal** a motion for a new trial is remanded to the Superior Court, the direct appeal of the conviction ~~shall~~ **will ordinarily** be stayed **until the motion is decided** ~~pending decision on the motion for new trial~~. The matter shall be heard and determined expeditiously in the Superior Court. The appellant shall file with the Clerk of the Supreme Judicial Court for the Commonwealth status reports **as directed by the Court** ~~at thirty-day intervals~~. An appeal by the defendant from the denial of a motion for a new trial shall be consolidated with the direct appeal. An appeal by the Commonwealth or by the defendant from the determination of a motion for a new trial shall have the same docket number as the direct appeal. The Clerk of the Supreme Judicial Court for the Commonwealth shall establish a briefing schedule.

(bd) Number of Copies to Be Filed and Served.

(1) Briefs and Appendices.

(A) Appeals Court. **Except as provided in the Appeals Court Standing Order Concerning Electronic Filing,** ~~o~~On appeals to the Appeals Court, ~~seven~~ **4** copies of each brief **and appendix** shall be filed with the clerk, unless the court by order in a particular case shall direct a ~~lesser~~ **different** number, and ~~two~~ **2** copies shall be served on counsel for each party separately represented, **2 copies of each shall be served on counsel for all jointly represented parties, and 2 copies of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or by order direct the filing or service of a different number.**

(2B) Supreme Judicial Court.

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

(3ii) Appeals ~~†~~Transferred to the Supreme Judicial Court from the Appeals Court. In any appeal transferred to the full Supreme Judicial Court, in which briefs **and appendices** have already been filed in the Appeals Court, ~~eleven additional~~ **7** copies of each brief **and appendix** shall be promptly filed with the clerk of the Supreme Judicial Court, unless the court by order in a particular case shall direct a ~~lesser or greater~~ **different** number.

(2) Exhibits and Transcripts in Civil Cases. Exhibits and transcripts or portions thereof in civil cases, designated for inclusion in the appendix, may be contained in separate volumes, suitably indexed.

(A) Appeals Court. **Except as provided in the Appeals Court Standing Order Concerning Electronic Filing,** on appeal to the Appeals Court, **2** copies of the exhibit volume or volumes, and **1** copy of the transcript volume or volumes

shall be filed with the brief and appendix and 1 copy of each shall be served on counsel for each party separately represented, 1 copy of each shall be served on counsel for all jointly represented parties, and 1 copy of each shall be served on each self-represented party to the appeal, unless the parties agree in writing or the court shall by rule or order direct the filing or service of a different number.

(B) Supreme Judicial Court.

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

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

(ee) Consequence of Failure to File Briefs and Appendices. If an appellant fails to file his a brief and appendix, other than a reply brief, within the time provided by this rule, or within the time as extended, the appellate court may, upon motion or sua sponte, dismiss the appeal. ~~an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the appellate court.~~ Any appellee who elects not to file a principal brief shall timely notify the appellate court and all parties that no brief will be filed. If an appellee fails to file a brief within the time provided by this rule, or within the time as extended, the appellate court may, upon motion or sua sponte, deem the case ready for consideration by the appellate court. An appellee who fails to file a timely brief will not be heard at oral argument except by permission of the appellate court.

Rule 20. Form **and Length** of Briefs, Appendices, and Other ~~Papers~~-**Documents**

(a) Form **and Length** of Briefs, **Appendices, and Applications for and Responses to Direct and Further Appellate Review** ~~and the Appendix.~~

(1) Form. Except on order of the appellate court or a single justice, or if filed on behalf of a party allowed to proceed ~~in forma pauperis~~ **as an indigent party**, all briefs, ~~and~~ **appendices, and applications for and responses to direct and further appellate review** shall be produced by any duplicating or copying process which produces a clear black image on white paper. However produced, the page shall be ~~eight and one-half~~ **8.5** inches in width and ~~eleven~~ **11** inches in height. Pages shall be firmly bound at the left, ~~by saddle wiring, side wiring, stapling, or sewing. If side-wired or sewn, a strong and a paper cover or front page shall be used. A transcript of testimony or a report of evidence may be included as part of the appendix and may be reproduced by Xerography or a similar process. No single volume of the appendix shall be more than one and one-half inches thick. The text of appendices may appear on both sides of the page.~~

(2) Length of Briefs in All Cases Other than Cross Appeals. The following rules shall govern the length of briefs in all cases other than cross appeals:

(A) A principal brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.

(B) A reply brief shall either be produced in a monospaced font and not contain more than 20 pages, or be produced in a proportionally spaced font and not contain more than 4,500 words.

(C) An amicus curiae brief shall either be produced in a monospaced font and not contain more than 35 pages, or be produced in a proportionally spaced font and not contain more than 7,500 words.

(D) In all briefs, only those parts required by Rule 16(a)(5)-(11), including headings, footnotes, and quotations, count towards the length limits.

(E) A motion to exceed these length limits shall specify the relevant issue or issues and why such issues merit additional pages or words, and will not be granted except for extraordinary reasons.

(F) The certification required pursuant to Rule 16(k) shall specifically state how compliance with the length limits of this rule was ascertained, as specified therein.

(3) Length of Briefs in Cases Involving Cross Appeals. The following rules shall govern the length of briefs in cases involving cross appeals:

(A) An appellant's principal brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.

(B) An appellee's principal and response brief shall either be produced in a monospaced font and not contain more than 60 pages, or be produced in a proportionally spaced font and not contain more than 13,000 words.

(C) An appellant's response and reply brief shall either be produced in a monospaced font and not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words.

(D) An appellee's reply brief shall either be produced in a monospaced font and not contain more than 20 pages, or be produced in a proportionally spaced font and not contain more than 4,500 words.

(E) An amicus curiae brief shall either be produced in a monospaced font and not contain more than 35 pages, or be produced in a proportionally spaced font and not contain more than 7,500 words.

(F) In all briefs, only those parts required by Rule 16(a)(5)-(11), including headings, footnotes, and quotations, count towards the length limits.

(G) A motion to exceed these length limits shall specify the relevant issue or issues and why such issues merit additional pages or words, and will not be granted except for extraordinary reasons.

(H) The certification required pursuant to Rule 16(k) shall specifically state how compliance with the length limits of this rule was ascertained, as specified therein.

(4) Format and Pagination of Text. The following rules shall govern the format of text on ~~a~~ the pages of ~~for~~ all briefs **and applications for and responses to direct or further appellate review:**

~~(1A)~~ **If a monospaced font is used,** ~~t~~The top and bottom margins shall be at least ~~one~~ **1** inch. The left and right margins shall be at least ~~one and one-half~~ **1.5** inches. ~~Thus, the text area should not be more than five and one-half~~ **5.5** inches in width nor more than ~~nine~~ **9** inches in height. **If a proportionally spaced font is used, the top, bottom, left, and right margins shall be at least 1 inch.** Page numbers ~~may~~ **shall** appear in the margin: **with the cover paginated as page 1 pursuant to Rule 20(a)(6)(B)(vii) and pages thereafter numbered consecutively through the last page, including any addendum.**

~~(2B)~~ The typeface **of all text, including footnotes,** shall be **either (i)** a monospaced font (such as ~~piea type produced by a typewriter or a Courier New font produced by a computer word processor~~) of 12 point or larger size and not exceeding 10.5 characters per inch; **or (ii) a proportionally spaced font (such as Times New Roman) of 14 point or larger size.**

~~(3C)~~ Text shall be double-spaced, except that argument headings, footnotes, and indented quotations may be single-spaced. For purposes of this rule, single spacing means not more than ~~six~~ **6** lines of text per vertical inch; double spacing means not more than ~~three~~ **3** lines of text per vertical inch and not more than ~~twenty-seven~~ **27** double-spaced lines on a page.

~~(4D)~~ The text may appear on both sides of the page.

(5) Format, Pagination, and Length of Appendix. The following rules shall govern the format of appendices:

(A) The cover of each volume of the appendix shall be designated by a Roman numeral and paginated as page 1, and pages thereafter numbered consecutively through the volume's last page. The cover shall also contain the information identified in Rule 20(a)(6)(B).

(B) Each volume of the appendix shall be separately paginated, beginning at page 1.

(C) No single volume of an appendix, transcript or exhibit shall be more than 1.5" thick.

(D) The text of appendices filed on paper may appear on both sides of the page.

~~Briefs or appendices not in substantial compliance with these rules shall not be received unless the appellate court or a single justice shall otherwise order.~~

(6) Color and Contents of Cover. The following rules shall govern the color and contents of the cover of all briefs, appendices, and applications for or responses to direct or further appellate review:

(A) Color. The cover of the brief of the appellant shall be blue; that of the appellee, red; that of ~~an~~ **a party intervening in the intervenor appeal, yellow; that of an** ~~or~~ amicus curiae, green; that of any reply brief, gray. The cover of the appendix, ~~if separately bound,~~ shall be white. **The cover or front page of an application for or response to direct or further appellate review shall be white. A color cover is not required for any electronically filed brief.**

(B) Contents. The front covers of the briefs and appendices, ~~if separately produced,~~ **in addition to the requirements for covers of appendices in Rule 20(a)(5), and of applications for or responses to direct or further appellate review** shall contain:

~~(1i)~~ the name of the court and the number of the case;

~~(2ii)~~ the title of the case (see Rule 10(a));

~~(3iii)~~ the nature of the proceeding in the **appellate** court (e.g., Appeal; Application for Review) and the name of the **lower** court, ~~agency, or board below;~~

~~(4iv)~~ the title of the document (e.g., Brief for Appellant, Appendix); ~~and~~

~~(5v)~~ the name(s), Board of Bar Overseers (BBO) number(s), **if any, mailing and electronic** addresses, **and** telephone number(s), ~~and e-mail addresses of the person(s) filing the document, if any, of counsel representing the party on whose behalf the document is filed, and, if any individual counsel is affiliated with a firm or office, the office firm name;~~ **and**

(vi) where it is necessary to include impounded material in a brief, the notification required by Rule 16(m).

(vii) The cover shall be paginated as page 1.

(7) Substantial Compliance Required. Briefs, appendices, or applications for or responses to direct or further appellate review not in substantial compliance with these rules shall not be docketed unless the appellate court or a single justice shall otherwise order.

(b) Form of Other Papers-~~Documents~~.

~~(1) Petitions~~ **Motions for Reconsideration-rehearing or Modification.** **Motions for reconsideration or modification** shall be produced in a manner prescribed by **Rule 27(b)**-subdivision (a). ~~Motions and other papers may be produced in like manner, or they may be typewritten in pica type upon opaque, unglazed paper eight and one half by eleven inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.~~

~~A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper; said caption shall appear on the first page, typed so as to be legible.~~

~~The cover of applications for direct appellate review and for further appellate review shall be white.~~

(2) Motions and Other Documents.

(A) A motion or other document addressed to an appellate court shall contain a caption setting forth the name of the court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the document; the caption shall appear on the first page. Lines of text shall be double-spaced and shall be in 12 point or larger font, with side and top margins no less than 1 inch, and shall be no longer than reasonably necessary. Consecutive pages shall be stapled at the upper left margin.

(B) Such motion or paper-document shall contain, at the end thereof,

(i) the **printed and signed** name(s), Board of Bar Overseers (BBO) number(s), **if any, mailing and electronic** addresses, and telephone number(s) of **the person(s) filing the document** ~~counsel, if any, representing the party on whose behalf the motion or paper is filed,~~ and, if any individual counsel is affiliated with a firm **or office**, the ~~firm~~**office** name, **and**

(ii) the date of signing.

Rule 21. ~~Prehearing Conference~~ Protection of Personal Identifying Information

~~Prehearing Conference~~

~~The appellate court may direct the attorneys for the parties to appear before the court or a single justice for 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. The appellate court or single justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.~~

Publicly accessible documents filed with the court shall conform to Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents.

Rule 22. Oral Argument

(a) Notice of Argument; Postponement. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Unless otherwise enlarged or limited by the appellate court, each side will be allowed ~~fifteen~~ **15** minutes for argument, except in a criminal case in which the defendant is appealing **from** a conviction of murder in the first degree, in which case each side will be allowed ~~twenty~~ **20** minutes for argument. ~~If counsel is of the opinion that additional time is necessary for the adequate presentation of the argument, counsel~~ **Reasonably in advance of the date fixed for oral argument, a party may request move for** additional time for good cause shown. ~~Requests may be made by letter addressed to the clerk reasonably in advance of the date fixed for the argument.~~ The appellate court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument.

(1) Oral Argument. ~~Except as otherwise provided in Rule 27.1(g),~~ The appellant will argue first and shall include a fair statement of the case. ~~Counsel will not be permitted to read, except briefly, from briefs, records, prepared statements, records or authorities. The party making the opening argument on request may be allowed the opportunity to reply in writing to new matter in the arguments of his adversary.~~ **Nothing argued in the brief shall be deemed to be waived by a failure to argue orally.**

(2) Post-Argument Filings. **After the oral argument of a case has been concluded or the case has been submitted on the documents without oral argument, no brief, memorandum, or letter relating to the case, except a citation of supplemental authorities letter filed pursuant to Rule 16(l), shall be submitted to the court, except to correct a factual misstatement during oral argument, or when such a writing was expressly allowed or requested by the court during the argument, or upon allowance of a motion to submit such a writing. Any such writing allowed during oral argument shall state that the court allowed the submission. A submission containing argument on the merits and not otherwise in compliance with this rule may be struck by the court.**

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the appellate court otherwise directs. ~~If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purposes of~~

~~this rule unless the parties otherwise agree or the court otherwise directs.~~ If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-appearance of Parties. **Parties are expected to appear for oral argument unless prior arrangements have been made with the court.** If the appellee fails to appear to present argument, the appellate court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if ~~his counsel is~~ present. If neither party appears, the case will be decided on the briefs unless the appellate court shall otherwise order.

~~(f) No Oral Argument by an Attorney Who Has Been a Witness Except by Leave of Court. No attorney shall be permitted to take part in the argument of a case in which he has been a witness for his client; except by special leave of court.~~

~~(g)~~ Submission on Briefs. By agreement of the parties, a case may at any time be submitted for decision on the briefs, but the appellate court may direct that the case be argued. At any time, any party may, by written notice filed and served, waive ~~his~~ **the party's** right to oral argument. No criminal case in which the defendant was convicted of murder in the first degree may be submitted for decision on the briefs without oral argument unless the ~~full~~ appellate court or a justice thereof shall have approved the submission prior to the week the case has been scheduled for argument.

~~(h)~~ Use of Physical Exhibits at Argument; Removal. If physical exhibits other than documents ~~or chalks~~ are to be used at the argument, ~~counsel~~ **the party** shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument, the exhibits shall be left with the clerk unless the court otherwise directs. If exhibits are not reclaimed by ~~counsel~~ **the party** within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule 23. ~~Issuance~~ **Notice of Decision; Issuance of Rescript;** Stay of Rescript

(a) The clerk of the appellate court shall ~~mail~~ **send** to all parties ~~a copy~~ **copies** of ~~or a link to~~ the rescript and the ~~opinion~~ **decision**, if one was written, **on the day the decision is released**.

(b) The rescript **and the decision** of the **appellate** court shall issue to the lower court ~~twenty-eight~~ **28** days after the date of the ~~rescript~~ **decision** unless the time is shortened or enlarged by order, **except as provided by Rule 23(c)**.

(c) **The issuance of the rescript will automatically be stayed, unless otherwise ordered by the appellate court, by the timely filing of:** (1) ~~The timely filing of a petition~~ **motion** for ~~rehearing~~ **reconsideration or modification pursuant to Rule 27;** or (2) ~~or of an application for further appellate review~~ **pursuant to Rule 27.1.** ~~will stay the rescript until disposition of the petition or application unless otherwise ordered by the appellate court. If the petition or application is denied,~~ **The rescript shall issue forthwith after both the disposition of any motions for reconsideration or modification and the denial of any applications for further appellate review,** unless the appellate court or a single justice orders otherwise. If an application for further appellate review is granted, the rescript of the Appeals Court shall not issue to the lower court.

Rule 24. Justices' Participation

(a) **Other Justices May Participate Without Reargument.** Whenever the justices before whom a ~~law question~~**case** has been heard so desire, others of the justices may be called in to take part in the decision, upon a ~~perusal~~ **review** of the record and briefs, **and the recording of any oral argument**, without reargument.

(b) Replacement of Justices. If a justice who has participated in a case becomes unable to participate further, then the Chief Justice of the appellate court may substitute another justice.

~~(b)~~ **(c) Justice May Review Own Ruling in Certain Cases.** No justice shall sit on the hearing of any proceeding in the nature of a review of any judgment, decree, order, or ruling made by ~~him~~**that justice**; provided, however, that this shall not apply where it is necessary to secure a quorum or where the other justices of the court shall be equally divided in opinion.

~~Rule 24.1. Divided Vote on Further Appellate Review~~

~~If, following allowance of an application for further appellate review, the justices of the Supreme Judicial Court are equally divided in opinion, unless a majority of the participating justices decides otherwise, the court shall issue an order noting such equal division, the effect of which shall be the same as if the court had denied the application for further appellate review.~~

Rule 25. Damages for ~~Delay~~ **Frivolous Appeal in Civil Cases**
(~~Applicable to Civil Cases~~)

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

Rule 26. Costs in Civil Cases

~~(Applicable to Civil Cases)~~ **This rule applies only to civil cases.**

(a) To Whom Allowed. Except as otherwise provided by law **or ordered by the court**, **(1)** if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed **to** by the parties ~~or ordered by the appellate court~~; **(2)** if a judgment is affirmed, costs shall be taxed against the appellant ~~unless otherwise ordered~~; **(3)** if a judgment is reversed, costs shall be taxed against the appellee ~~unless otherwise ordered~~; **(4)** if a judgment is affirmed **in part**, ~~or~~ reversed in part, **modified**, or is vacated, costs ~~shall be allowed~~ **are taxed** only as ordered by the appellate court. **Costs shall not be taxed against a party determined indigent in the same proceeding.**

(b) Costs For and Against the Commonwealth. In cases involving the Commonwealth or an agency or officer thereof, if an award of costs against the Commonwealth is authorized by law, costs shall be awarded in accordance with the provisions of ~~subdivision~~ **Rule 26(a)**; otherwise, costs shall not be awarded for or against the Commonwealth.

(c) Costs of Briefs; **and** Appendices; ~~and Copies of Records~~. The cost of printing or otherwise producing necessary copies of briefs; **and** appendices; ~~or copies of records authorized by Rule 18(f)~~ shall be taxable in the lower court at rates not higher than those generally charged for such work in the Commonwealth. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which ~~he~~ shall **be filed** ~~file~~ with the clerk of the lower court, with proof of service, within ~~fourteen~~ **14** days after the entry of judgment.

(d) Clerk to Insert Costs in Lower Court Judgment; Costs Taxable. The clerk of the lower court shall prepare and certify an itemized statement of costs **on appeal** for insertion in the lower court judgment. ~~The statement shall include those~~ **following costs taxable on appeal are taxable in the lower court for the benefit of the party entitled to costs under this rule:**

- ~~(1) copies~~ under ~~subdivision~~ **Rule 26(c)** ~~of this rule~~;
- ~~(2)~~ costs incurred in the preparation and transmission of the record;
- ~~(3)~~ ~~the cost of the reporter's transcript, if necessary for the~~ ~~determination of the appeal~~;
- ~~(4)~~ ~~the premiums paid for cost of any bond to preserve rights pending appeal~~;

~~(5) and the fee for~~ **docketing the appeal under Rule 10(a)(1)** ~~filing the notice of appeal shall be taxed in the lower court as costs of the appeal in favor of the party entitled to costs under this rule; and~~

(6) the cost of any convenience fees and other administrative fees levied for the privilege of paying fees or costs by credit card or other means, including, but not limited to, fees for electronic filing of documents or pleadings with the court.

Rule 27. ~~Petition~~**Motion for Rehearing**~~Reconsideration or Modification of Decision~~

(a) Time for Filing; Content; ~~Answer~~; Action by Court if Granted. ~~A petition for rehearing should be filed with the clerk of the appellate court w~~Within fourteen **14** days after the date of the ~~rescript~~ **decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision** unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the ~~petition~~ **motion** as the ~~petitioner~~**movant** desires to present. Oral argument in support of the ~~petition~~ **motion** will not be permitted, except by order of the ~~quorum or panel~~ **appellate court** which decided the appeal. ~~No answer to a petition for rehearing will be received unless requested by the quorum or panel, but a petition for rehearing will ordinarily not be granted in the absence of such a request.~~ ~~A~~**The petition motion for rehearing shall be decided by the quorum or panel of the appellate court** which decided the appeal. ~~If a petition for rehearing is granted, the quorum or panel may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. Action upon a petition is in the discretion of such quorum or panel, which may award costs, including a reasonable attorney's fee, to the prevailing party.~~

(b) Form of ~~Petition~~**Motion**; Length. ~~The petition shall be in a form of a letter to the senior justice of the quorum or panel which decided the appeal with seven clear and legible copies, and additional copies shall be mailed by first class mail or delivered to all other counsel. Except by permission of the quorum or panel appellate court, a petition motion for rehearing shall not exceed either ten 10 pages of standard typewritten material of text in monospaced font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).~~

(c) Response. ~~No response to a motion for reconsideration or modification will be docketed unless requested by the appellate court, but reconsideration will ordinarily not be granted in the absence of such a request. Any response filed pursuant to this provision shall comply with the form and length requirements in Rule 27(b).~~

(d) Filing and Service. ~~The motion, and any requested response, shall be filed in the office of the clerk of the appellate court that released the decision. In the Supreme Judicial Court, a paper original and 7 copies of the motion shall be filed. In the Appeals Court, the motion shall be filed in electronic form and no paper original or copies are required. Service of the motion, and any requested response, shall comply with Rule 13.~~

(e) Ruling on Motion. Upon consideration of a motion and any response, the appellate court may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. Action upon a motion is in the discretion of such appellate court, which may award costs, including a reasonable attorney's fee, to the prevailing party.

~~(ef) Revision of Decision~~**Notice to Supreme Judicial Court.** ~~Upon consideration of a petition for rehearing, a quorum or panel may in writing order their decision to be reviewed and revised by a majority of the justices of the court. The petitioner~~ **A party seeking further appellate review shall promptly** notify the Supreme Judicial Court of any action taken on the ~~petition motion~~ **motion** if an application for further appellate review also has been filed.

Rule 27.1. Further Appellate Review

(a) Application; When Filed; Grounds. Within ~~twenty~~ **21** days after the date of the ~~rescript~~ **decision** of the Appeals Court, any party to the appeal may file an application for ~~leave to obtain~~ further appellate review of the case by the ~~full~~ Supreme Judicial Court. Such application shall be founded upon substantial reasons affecting the public interest or the interests of justice. Oral argument in support of an application shall not be permitted except by order of the court.

(b) Contents of Application; Form. The application for ~~leave to obtain~~ further appellate review shall contain, in the following order: (1) a request for ~~leave to obtain~~ further appellate review; (2) a statement of prior proceedings in the case (including whether any party is seeking a ~~rehearing~~ **reconsideration or modification** in the Appeals Court); (3) a short statement of facts relevant to the appeal (but facts correctly stated in the ~~opinion, if any,~~ **decision** of the Appeals Court shall not be restated); (4) a statement of the points with respect to which further appellate review of the decision of the ~~appeals court~~ **Appeals Court** is sought; and (5) a brief statement (~~covering~~ **consisting of** not more than either ~~ten~~ **10** pages of ~~typing text in monospaced font or 2,000 words in proportional font as defined in Rule 20(a)(4)(B)),~~ including appropriate authorities, indicating why further appellate review is appropriate. A copy of the rescript and ~~opinion, if any,~~ **decision** of the Appeals Court shall be appended to the application. In addition, if the Appeals Court entered a memorandum and order under Appeals Court Rule 1:28 which refers to another document, such as a brief or judge's findings and rulings, a copy of that document, or, if appropriate, the pertinent pages of that document, shall be appended to the application. The application shall comply with the requirements of Rule 20(a), **and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).**

(c) ~~Opposition~~**Response**; Form. Within ~~ten~~ **14** days after the filing of the application, any other party to the appeal may, but need not, file and serve ~~an opposition~~ **a response** thereto (~~covering~~ **consisting of** not more than ~~either ten~~ **10** pages of ~~typing text in monospaced font or 2,000 words of text in proportional font, as defined in Rule 20(a)(4)(B))~~ setting forth reasons why the application should **or should** not be granted. The ~~opposition response~~ shall not restate matters described in ~~subdivision~~ **Rule 27.1(b)(2)** and (3) ~~of this rule~~ unless the opposing party is dissatisfied with the statement thereof contained in the application. ~~An application~~ **A response** shall comply with the requirements of Rule 20(a), **and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).** A response may be filed in a different form as permitted by the court.

(d) Filing; Service. ~~One copy of the application and one copy of each opposition shall be filed in the office of the clerk of the Appeals Court. An original and seventeen copies~~ **One copy** of the

application and of each ~~opposition~~ **response** shall be filed in the office of the clerk of the full Supreme Judicial Court. **No copy of the application or any response need be filed in the Appeals Court.** Filing and service of the application and of any ~~opposition~~ **response** shall comply with Rule 13.

(e) Vote for Further Appellate Review; Certification. If any ~~three~~ **3** justices of the Supreme Judicial Court shall vote for further appellate review for substantial reasons affecting the public interest or the interests of justice, or if a majority of the justices of the Appeals Court or a majority of the justices of the Appeals Court deciding the case shall certify that the public interest or the interests of justice make desirable a further appellate review, an order allowing the application or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court **with notice to the lower court.**; ~~upon receipt, further appellate review shall be deemed granted.~~ The clerk **of the Appeals Court** shall forthwith transmit to the clerk of the full Supreme Judicial Court all ~~papers theretofore~~ **documents** filed in the case ~~and shall notify the clerk of the lower court that leave to obtain further appellate review has been granted.~~

(f) Briefs. Any party may apply to the Supreme Judicial Court within ~~ten~~ **14** days after the date on which the appeal is docketed in the full Supreme Judicial Court for permission to file a new brief. If the application is granted, the new brief must be filed in accordance with the briefing schedule established by the ~~C~~clerk of the Supreme Judicial Court, and the court may impose terms as to the length and filing of such brief and any response thereto. If a new brief is filed, it will be considered in lieu of the Appeals Court brief. If permission to file a new brief is denied or not sought, cases in which further appellate review has been granted shall be argued on the briefs filed in the Appeals Court.

(g) ~~Order of Argument.~~ ~~The applicant for leave to obtain further appellate review will argue first unless the court directs or the parties agree otherwise.~~ **Equally Divided Vote on Further Appellate Review. If, following allowance of an application for further appellate review, the justices of the Supreme Judicial Court are equally divided in opinion, unless a majority of the participating justices decides otherwise, the court shall issue an order noting such equal division, the effect of which shall be the same as if the court had denied the application for further appellate review.**

Rule 28. ~~Entry of Judgment~~ **Procedure in Lower Court** Following Rescript

(Applicable to Civil Cases)

(a) Civil Cases. In a civil case, wWhen the rescript from the appellate court sets forth the text of the judgment to be entered, the clerk of the lower court shall, upon receipt of the rescript, prepare, sign, and enter the judgment which has been ordered. If the rescript orders settlement of the form of the judgment in the lower court, the clerk of the lower court shall sign and enter the judgment after settlement. Notation of a judgment in the lower court docket constitutes entry of the judgment.

(b) Criminal Cases. If the rescript has the effect of entitling the defendant to immediate release from custody, counsel for the defendant, the Commonwealth, and the clerk of the lower court shall immediately take any action necessary to ensure that the defendant is released from custody forthwith. In all other criminal cases, unless the rescript affirms the lower court, the clerk of the lower court shall, upon receipt of the rescript, schedule a hearing forthwith to be held no later than 30 days from the clerk's entry of the rescript.

Rule 29. Voluntary Dismissal of Appeal or Other Proceeding

(a) **Voluntary Dismissal in the Lower Court.** ~~Before~~^{If} an appeal has ~~not~~ been docketed **in the appellate court**, ~~the appeal may be dismissed by the lower court~~ **may dismiss the appeal on** ~~upon the filing in that court of a stipulation for dismissal signed by all the parties; or on the appellant's upon motion and with notice by the appellant~~ **to all parties.**

(b) **Voluntary Dismissal in the Appellate Court.**

(1) Civil Cases. If the parties to ~~an~~ **a civil** appeal or other **civil** proceeding shall sign and file with the clerk of the appellate court ~~an agreement~~ **a stipulation or motion** that the proceeding be dismissed **with prejudice**, specifying the terms as to payment of costs **and attorney's fees**, and shall pay whatever fees are due, the clerk shall enter the case as dismissed, ~~but no rescript or other process shall issue without an order of the appellate court.~~ An appeal may be dismissed on motion of the appellant ~~upon~~ such terms as may be agreed upon by the parties or fixed by the court. ~~The clerk of the appellate court shall promptly notify the clerk of the lower court whenever an appeal in a criminal case is dismissed pursuant to this rule.~~

(2) Criminal Cases. A criminal appeal or other criminal proceeding may be **dismissed by the appellate court on motion of the appellant, and the clerk shall enter the case as dismissed. If the appellant is the defendant, the motion shall include an affidavit by the defendant, or an attestation by counsel, that the defendant assents to the court's dismissal of the appeal with prejudice. If the motion states that the appeal is moot, an affidavit by the defendant is not required.**

(c) **Settlement; Obligation of Appellant.** In the event a case is settled or otherwise disposed of while an appeal is pending, it shall be the duty of ~~counsel for~~ the appellant to notify the clerk of the appellate court forthwith.

(d) Notice to Lower Court. **The clerk of the appellate court shall promptly notify the clerk of the lower court whenever an appeal is dismissed pursuant to this rule.**

Rule 30. Substitution of Parties **in Civil Cases**

~~(Applicable to Civil Cases)~~ **This rule applies only to civil cases.**

(a) Death of a Party. If a party dies after a notice of appeal is filed in the lower court or while a proceeding is pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appropriate court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 13. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate court or a single justice may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the lower court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the appeal is docketed, substitution shall be effected in the appellate court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by ~~his~~ **the party's** personal representative, or, if ~~he~~ **the party** has no personal representative, by ~~his~~ **the party's** attorney of record within the time prescribed by these rules. After the appeal is docketed, substitution shall be effected in the appellate court in accordance with this subdivision.

(b) Substitution for Other Causes. If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in ~~subdivision~~ **Rule 30(a)**.

(c) Public Officers; Death or Separation ~~F~~from Office.

(1) When a public officer is a party to an appeal or other proceeding in an appellate court in ~~his~~ **the public officer's** official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and ~~his~~ **the public officer's** successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in ~~his~~ **the public officer's** official capacity, **the public officer** ~~he~~ may be described as a party by ~~his~~ official title rather than by name; but the court may require ~~his~~ **the public officer's** name to be added.

Rule 31. Duties of Clerks

(a) General Provisions. ~~Any clerk of the appellate court shall take the oath and give the bond required by law. No clerk shall practice in any court as an attorney or as counselor while he continues in office.~~ The Supreme Judicial Court and the Appeals Court shall be deemed always open for the purpose of filing any proper ~~paper~~**document**, of issuing and returning process, and of making motions and orders. The office of the clerk with a clerk in attendance shall be open during ~~the hours from nine in the morning to four thirty in the afternoon~~ **regular court business hours** on all **weekdays** except **State and Federal holidays recognized by Saturdays, Sundays,** and those days specified in G.L. c. 4, § 7, any other day appointed as a holiday by the President or the Congress of the United States, or designated by the laws of the Commonwealth, and except that either court may authorize closing of its clerk's office at four in the afternoon during ~~the period between the Fourth of July and Labor Day.~~

(b) The Docket; Calendar; Other Records Required.

(1) The clerk shall keep ~~an electronic book known as the docket~~, in such form and style as may be prescribed by the appellate court, and shall enter therein each case. Cases shall be assigned consecutive ~~file~~ **docket** numbers. ~~The file number of each case shall be noted on the folio of the docket whereon the first entry is made.~~ All papers ~~filings~~ filed ~~with the clerk and all process, orders, decisions, and rescripts shall be entered chronologically in~~ **on** the docket ~~on the folio assigned to the case.~~ Entries shall be brief ~~but shall show the nature of each paper filing, order, decision, filed or rescript or order entered.~~ The entry of an order or rescript shall show the date the entry is made. ~~The clerk shall keep a suitable index of cases contained in the docket.~~

(2) The clerk shall prepare, under the direction of the appellate court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, ~~he~~ **the clerk** shall give preference to appeals in **child welfare and** criminal cases, and to appeals and other proceedings entitled to preference by law.

(3) The clerk shall keep such other ~~books and~~ records as may be required from time to time by law or by the appellate court.

(c) Notice of Orders, **Decisions, or Rescripts.** **Upon the entry of an order, decision, or rescript, including an order on an application for direct or further appellate review, the clerk of the appellate court shall send a notice of entry to each party, and include a copy of or a link to any decision and rescript. The clerk shall send such notice to the electronic business address of an attorney that is registered with the Board of Bar Overseers, and may send paper notice by conventional mail. The clerk shall send such notice to the**

mailing or electronic address of a self-represented party, depending upon such party's address preference as registered with the clerk. ~~Immediately upon the entry of an order or rescript or upon receipt of notice of the grant of an application for direct or further appellate review, the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or rescript, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.~~

(d) Custody of Records and ~~Papers~~**Documents**. The clerk shall have custody of the records and ~~papers~~ **documents** of the appellate court. ~~He~~ **The clerk** shall not permit any original record or ~~paper~~ **document** to be taken from ~~his~~ **the clerk's** custody except as authorized by the orders or instructions of the court or a single justice. Original ~~papers~~ **documents** transmitted as the record on appeal or review shall ~~upon disposition of the case~~ be returned to the lower court ~~from which they were received~~.