

APPELLATE PRACTICE GUIDE for use with THE MAINE RULES OF APPELLATE PROCEDURE (restyled, effective September 1, 2017)

08-18-17

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I. INTRODUCTION

This document outlines the steps necessary to file, present, and defend an appeal before the Maine Supreme Judicial Court, which is called the Law Court when it considers appeals from trial court or administrative agency decisions or questions certified from the federal courts. This document references the court rule or rules related to each step in the appeal process.

Basic principles for appeals are discussed for relatively common cases such as divorces and parental rights matters; final protection from abuse judgments; criminal cases; and contract, negligence, damages, real estate, and debt collection claims. This is a very general outline of rule and practice requirements to maintain an appeal. The Rules themselves should be read carefully to assure proper compliance with the Rules in specific instances. This guide does not discuss appeals from District Court decisions in Forcible Entry and Detainer (M.R. Civ. P. 80D) and Small Claims (M.R. Civ. P. 80L) actions, because those appeals must be presented to the Superior Court. *See* M.R. Civ. P. 76C-76G. Likewise, this guide does not discuss initial consideration of appeals from local government and state agency decisions, most of which are presented, first, to the Superior Court. *See* M.R. Civ. P. 80B, 80C. However, once such appeals have been resolved by the Superior Court, the procedures for appeal to the Law Court follow the practices discussed in this guide.

II. FILING AND PREPARING AN APPEAL

Each trial court decision that is a final judgment, subject to appeal, will result in a written order signed or initialed by the trial judge. Even a decision stated orally in the courtroom at the conclusion of a hearing, or a verdict rendered by a jury, will also appear as a written order. The nature of those orders can vary anywhere from a brief entry with one or two boxes checked and the judge's signature or initials on a court form, to a decision of 50 pages or more. A party to the case has a right to receive a copy of the written order that constitutes the court's final judgment.

An appeal from a decision of the trial court proceeds through the following steps:

(1) Notice of Appeal. An appeal is initiated by filing **with the trial court that issued the decision** being challenged a notice of appeal, M.R. App.

P. 2A(b)(1), and, in most cases, a transcript order form, M.R. App. P. 2A(d). The notice of appeal must be signed by a party or the party's attorney and filed at the proper trial court clerk's office. A notice of appeal form may be obtained from the trial court clerk. The notice of appeal form and related information may also be obtained through the Maine Judicial Branch website, <http://www.courts.maine.gov/>. Paper copies of the notice of appeal form must be signed and filed with the trial court to commence the appeal.

(2) Filing Fee. No filing fee is required for criminal appeals. A party filing a civil appeal must pay the appeal filing fee, M.R. App. P. 2A(c)(1), currently **\$150, to the trial court clerk**. A party who cannot afford to pay the filing fee may seek a waiver of the fee by filing **with the trial court** an application to proceed without payment of fees. *See* M.R. Civ. P. 91(f). A fee waiver request will be decided by the trial court.

(3) Time Limits. Most appeals must be filed within **21 days after the judge's order is entered in the docket**. M.R. App. P. 2B(b)(1)(b) (criminal); M.R. App. P. 2B(c)(1) (civil). Extradition order appeals must be filed within **7 days**. M.R. App. P. 2B(b)(3). The entry of the order into the docket may occur on the date of the judge's written or oral decision or the jury's verdict, or shortly thereafter. An appeal is valid even if it is filed after a decision is announced but before the order confirming the decision is entered in the docket. M.R. App. P. 2B(a)(1).

An appeal will be dismissed if it is filed after the 21-day deadline. An extension of time to file an appeal may be granted, but only upon a showing of good cause, meaning a good excuse for the filing delay. A request to extend the time to file the appeal **must be presented to the trial court**. M.R. App. P. 2B(d). The extension of time may not exceed 21 days from expiration of the original deadline, M.R. App. P. 2B(d)(1), except in the rare case when a court clerk does not send a notice of judgment to the party, M.R. App. P. 2B(d)(2).

(4) Post-Judgment Motions. A timely post-judgment motion for further findings of fact, a new trial, or reconsideration or amendment of the judgment will generally stay the deadline for filing an appeal until the motion is decided by the trial court. *See* M.R. App. P. 2B(b)(2), (c)(2), for a listing of such motions in the trial court. Appeals must be filed within 21 days after decision on the motion. To accommodate trial court consideration and decision of such motions, the file is retained in the trial court for at least 28

days following the filing of a notice of appeal, and if a post-judgment motion is filed, until decision on the motion. M.R. App. P. 6(a)(1), (2).

(5) Cross-Appeals. After one party in a civil case files an appeal, any other party may file a cross-appeal to argue for some change to the trial court decision. M.R. App. P. 2C(a)(1). A cross-appeal must be filed within the time for filing an appeal or within 14 days after the timely filing of the first notice of appeal, whichever happens last. M.R. App. P. 2C(a)(2). A party who does not file a cross-appeal cannot obtain a change in the trial court's judgment. Arguing for such a change in an appellee's brief is not sufficient to merit a change if no cross-appeal has been filed. However, an appellee may properly argue, as a matter of law, that a trial court judgment should be affirmed for reasons different than stated in the trial court decision.

When more than one party appeals, the party who filed the first notice of appeal is considered the "appellant," and the party who filed a later notice of appeal is considered an "appellee" (as well as a "cross-appellant"), even though the "appellee" also seeks to change the trial court's decision, M.R. App. P. 2C(a)(3).¹

(6) Transcript Preparation. Virtually all contested hearings in a courtroom are recorded. However, the court does not prepare written transcripts of court proceedings for appeal. **The parties are responsible for ordering and paying for transcripts needed for an appeal.** In criminal appeals, there is a standard transcript that will be prepared upon a request for a transcript with the filing of an appeal. M.R. App. P. 5(b)(1)(A). There is no standard transcript in a civil case.

If the appeal asserts that the court's findings of fact are not supported by evidence in the record, a transcript of all or most of the trial proceedings is usually necessary to address these issues. *See* M.R. App. P. 5(b)(2)(A). When no transcript or an incomplete transcript is provided, the Law Court may assume that the record supports the fact-findings and discretionary choices, including remedies, ordered by the trial court.

¹ When the parents of a minor child are separately represented in an action by the State or another third party involving parental rights to their child or children, and each parent appeals the trial court's judgment in the action, each parent may be considered an appellant. M.R. App. P. 2C(c). Similarly, jointly tried criminal defendants would each be considered an appellant in separately filed appeals from the judgments of conviction.

(7) Payment for Transcript. After the transcript order is filed with the notice of appeal, the other parties to the appeal have 7 days to order additional portions of the transcript. M.R. App. P. 5(b)(1)(A), (2)(A). Within 7 days after filing the notice of appeal, the party filing the appeal must make satisfactory arrangements to pay for the ordered transcript, or else the transcript order may be canceled and the appeal will proceed without a transcript. M.R. App. P. 5(b)(2)(B).

Defendants in criminal cases and parties in civil child protective cases who qualify for court-appointed counsel may have the cost of the transcript on appeal paid as an expense of the Maine Commission on Indigent Legal Services. M.R. App. P. 5(b)(1)(B), (2)(B)(ii). In the limited circumstances addressed in M.R. Civ. P. 91(f)(2), a court recording of a hearing may be utilized instead of a transcript.

(8) Copies of Documents to Other Parties. Copies of the notice of appeal, the transcript order form, the briefs, and any document filed with any court in connection with an appeal **must be sent to each other party to the appeal** by mailing a copy to that party or the party's lawyer, if the party has a lawyer representing him or her. M.R. App. P. 2A(b)(1); M.R. Civ. P. 5(a).

(9) The Trial Court Record. After the filing of the notice of appeal, the trial court record will be retained in the trial court for 28 days to allow for trial court consideration of timely filed post-judgment motions. After 28 days, or a later time after trial court decision on a post-judgment motion, the clerk of the trial court will send the record to the Law Court. M.R. App. P. 6(a)(1), (2). The trial court record includes the trial court file containing every pleading, order, or other document related to the case and filed in the trial court, plus a copy of the docket entries. The record will include trial exhibits that are print or digital documents or photographs, but, unless a special request is made, the record sent to the Law Court may not include bulky documents or tangible objects that were exhibits, such as voluminous reports, computers, weapons, drugs, clothing, items subject to chemical or biological testing, or containers of liquids. M.R. App. P. 6(b).

When an appeal involves a challenge to a trial court decision on an appeal from a state or local administrative agency, the trial court's record will include the record from the state or local agency proceeding that was presented to the trial court, in addition to the record created in the trial court.

(10) Law Court Motion Practice. An appeal before the Law Court may involve motion practice, such as motions to dismiss, to continue, for oral argument, and to enlarge the time for filing. *See* M.R. App. P. 10, 11(a)(2), 12A(b)(1). Such motions must be submitted in a particular format, M.R. App. P. 10(d), and must “state with particularity the grounds” for the motion and must “set forth the order or relief sought,” M.R. App. P. 10(a)(1). Responses to motions must be filed within 7 days, but the Law Court also may act upon a motion without waiting for a response. M.R. App. P. 10(c). An attorney seeking a delay of more than 7 days must notify his or her client of such a motion. M.R. App. P. 10(a)(2).

(11) The Law Court Briefing Schedule. When the transcript is filed with the Law Court, or when the record from the trial court is received if no transcript is ordered, the Clerk of the Law Court will send to each party to the appeal a notice stating the dates by which the appellant’s brief, the appellee’s brief, the appendix, and any appellant’s reply brief must be filed. M.R. App. P. 7(a). This notice will have on it a Law Court docket number, which is different from any trial court docket number. Only the Law Court docket number should be used in all filings with the Law Court. The briefing schedules for particular case types are set by M.R. App. P. 7(b)(1) and (2).

(12) Preparing, Filing, and Contents of Briefs. The case name on the brief should be the same as the case name in the trial court, regardless of which party files the appeal. The rules for briefs, including directions regarding form, content, and organization, appear in M.R. App. P. 7A. A brief must be signed by the person indicated as the drafter of the brief.

A principal brief may not exceed 40 pages or 10,000 words without permission from the Law Court. M.R. App. P. 7A(f)(1). Although the 40-page or 10,000-word limit indicates an outside limit, the great bulk of the briefs filed range in length from 15 to 30 pages, and many briefs of less than 15 pages are received. The appellee’s brief must follow the same form as the appellant’s brief, but it need not include a statement of the issues or the facts of the case, unless the appellee wishes to state the issues or facts differently than they were stated by the appellant.

An appellant may file a reply brief limited to addressing new arguments or issues raised in the appellee’s brief. A reply brief may not exceed 15 pages or 4,500 words without prior approval from the Law Court. M.R. App. P.

7A(f)(1). Different length limits are set for principal and reply briefs for cases involving cross-appeals. M.R. App. P. 7A(f)(1).

Briefs may discuss any source and cite any appropriate authority for the arguments in the brief. Briefs may not discuss facts or attach documents about facts that are not part of the record that was considered by the trial court. Also, M.R. App. P. 7A(a)(2) prohibits inclusion in briefs of certain information or images that may violate important personal privacy rights.

(13) Distribution of Briefs. Ten print copies of each brief must be filed with the Clerk of the Law Court. M.R. App. P. 7A(i)(1). Two print copies of each brief must be mailed or otherwise delivered to each other party to the appeal. M.R. App. P. 7A(i)(1). One electronic copy of each brief, in native .pdf format, must be emailed to the Clerk of the Law Court, with copies emailed to the other parties to the appeal. M.R. App. P. 7A(i)(2).

(14) The Appendix to the Briefs. The appendix to the briefs includes copies of important documents from the trial court record. Except for child protection cases, the appellant is responsible for preparing and filing the appendix to the briefs. M.R. App. P. 8(a).

Eight copies of the appendix must be filed with the appellant's brief unless the parties agree to file the appendix at a later time, but no later than the filing deadline for the appellee's brief. M.R. App. P. 8(b)(1). If the appendix consists of 20 pages or fewer, it may be bound and filed with the appellant's brief. M.R. App. P. 8(k)(1). A longer appendix must be bound and filed separately. No appendix may be longer than a single volume of 150 pages, printed on both sides of the page, without prior approval of the Court. M.R. App. P. 8(k)(5).

Contents of the appendix **that are mandatory for all appeals** are specified in M.R. App. P. 8(d). Contents that are mandatory for particular types of appeals are specified in M.R. App. P. 8(e). **The rule specifies the order in which the mandatory documents must appear in the appendix.** Rule 8(g) prohibits inclusion in the appendix of certain information or images that may violate important personal privacy rights. Significant disregard for the required ordering of documents in the appendix, or for the required inclusion or exclusion of certain documents or information in the appendix, has on occasion resulted in orders to refile the appendix with documents

appearing in the required order or resulted in dismissal of an appeal for disregard of Rule 8.

(15) Process After Briefing. The parties to the appeal will be notified if the appeal will be considered “on the briefs” or if the parties will be asked to appear before the justices to present oral argument. If the appeal is set for consideration on the briefs, the parties do not need to do anything else. If the appeal is set for oral argument, the Clerk will notify the parties of the specific date, time, and place of the argument. Attention to the place of the argument is important. Approximately half of the oral arguments each year are conducted in Portland, and half are conducted in Augusta, Bangor, and other locations.

(16) Oral Argument. At oral argument, the parties are allowed to state their positions and then respond to questions from the justices. Each side may have up to 3 minutes exempt from questions at the start of the argument. Each side is allotted up to 15 minutes for oral argument. M.R. App. P. 11(b). Many appellants divide their time, requesting approximately 12 minutes to present their opening argument and reserving up to 3 minutes for an opportunity to rebut the appellee’s argument. There is no rebuttal time for appellees.

(17) Decision. A decision in an appeal may be published any time from one day up to a year or more after the appeal is argued or considered on the briefs. Most decisions are published within three months of the date of the Law Court’s initial consideration of the appeal.

(18) Proceedings After Decision. After the decision on an appeal is issued, the parties have 14 days to file, on limited grounds, a motion for reconsideration. M.R. App. P. 14(b). After that time, the Law Court issues a “mandate” indicating the outcome of the appeal, i.e., whether the trial court’s decision is vacated or affirmed and whether further proceedings are necessary. M.R. App. P. 14(a). When the mandate issues, the case file is returned to the trial court. The trial court resumes authority over the case, either to enforce the terms of any judgment that is affirmed or to proceed as directed by the Law Court in the case of a judgment that is vacated.

(19) Costs and Attorney Fees. In civil cases, the Law Court may also order that costs on the appeal must be paid to the prevailing party by the nonprevailing party. M.R. App. P. 13. Costs do not include attorney fees but

do include other out-of-pocket expenses such as the expenses of producing the briefs and the appendix and filing the appeal. Occasionally, when authorized by statute or when the Law Court determines that an appeal was frivolous, the Law Court may order payment of attorney fees or award a sum toward attorney fees on appeal. M.R. App. P. 13(f).

III. THINGS TO CONSIDER BEFORE APPEALING A DECISION

In considering an appeal, several points are important:

(1) Party Status Required. To appeal, you must have been a “party” to the trial court proceeding—that is, a plaintiff, a defendant, or, occasionally, an intervenor. M.R. App. P. 2A(b); M.R. Civ. P. 24. Subject to a few exceptions, those who were not parties to the trial court proceeding do not have a right to appeal.

(2) The Trial Court Decision Must Be “Final.” Appeals generally may be taken only from “final” decisions—that is, decisions (also called judgments) that resolve all pending claims leaving nothing else for the trial court to do in the case. Appeals generally are not allowed from interim trial court decisions or rulings that determine rights while the case is pending in the trial court but do not finally decide the case.

Subject to limited exceptions, there is no immediate right of appeal from rulings that, for example, (i) admit or exclude evidence; (ii) decide that some claims or issues will be tried while others will not be tried; (iii) resolve a pretrial dispute about discovery, disclosure of information, or evidence; or (iv) are characterized as “preliminary,” “interim,” “temporary,” or are otherwise issued during the course of the proceeding but before a final decision. Once a final decision is made, a party may appeal from any earlier ruling that may have affected the final judgment and was properly opposed or objected to before the ruling was made. M.R. App. P. 2B(b), (c).

(3) Review is Limited to the Record. Decision-making on an appeal is based on the “record” developed in the trial court. M.R. App. P. 5, 6. Oral testimony, oral arguments, and oral rulings by the judge are part of the record. These oral statements will be considered on appeal only if the trial court hearing was recorded and a transcript is prepared and presented to the Law Court on appeal. The party filing the appeal is usually responsible for ordering and paying for the transcript. M.R. App. P. 5(b). The transcript must

be ordered when the notice of appeal is filed. M.R. App. P. 2A(d). When no transcript is presented, the Law Court generally will infer that the record would support all findings of fact and discretionary rulings, including remedies, ordered by the trial court.

(4) Appeal is Not a New Trial. An appeal is not a new trial. The Law Court will not consider new testimony, new exhibits, or other material relating to the facts of the case that were not presented to the trial court. When new facts, new testimony, or new exhibits are discovered for the first time after trial, and could not have been discovered before trial, the appropriate remedy may be a motion to the trial court for a new hearing or trial as described in M.R. Civ. P. 59, 60(b), or M.R.U. Crim. P. 33.

(5) Objection to Trial Court Ruling Necessary. Most trial court rulings on the facts, on the evidence, or on procedural matters must have been opposed or objected to on the record in the trial court before any challenge to the ruling will be considered on appeal. There is an exception to this rule—infrequently applied—for what are called “obvious” or “plain” errors, when the trial court makes a ruling that is not correct as a matter of law and the challenged ruling substantially affects a party’s personal, property, or liberty rights or the fundamental fairness of the proceeding. *See* M.R. Evid. 103(d) and M.R.U. Crim. P. 52(b).

(6) Standards of Review. The standard of review for most issues will fall into one of three broad categories: (i) “de novo” review on questions of law, (ii) “clear error” or “sufficiency of the evidence” review of trial court fact-finding, and (iii) “abuse of discretion” review of questions involving the trial court’s exercise of discretion.

The Law Court will reach its own decision as to whether a ruling of law subject to appeal was correct or incorrect. The Law Court gives the trial court no “deference” on review of legal questions.

On fact questions, the Law Court will conduct a “deferential” review for “clear error,” meaning that it will defer to the trial court’s decision as to (1) which witnesses to believe and not believe; (2) what significance to attach to particular testimony or exhibits; and (3) what inferences may or may not be drawn from evidence or exhibits. In “clear error” review, a factual finding will be affirmed if supported by some evidence properly admitted into the record.

Trial court rulings on discretionary or procedural issues will be examined to determine whether the trial court “abused its discretion” in ruling as it did. The appeals court will uphold the ruling of the trial court unless it determines that the trial court exceeded the bounds of its discretion or that there is no rational basis for the trial court’s ruling.

IV. CONCLUSION

The above represents a general outline of the steps through which an appeal proceeds to the Law Court. There are some exceptions to these procedures that were omitted from discussion to keep the outline general and brief. Such exceptions may, however, become significant in some appeals. Accordingly, the rules and case law governing particular appeals should be considered carefully as any appeal is prepared and processed. Questions about appeal filing and process may be directed to the office of the Clerk of the Supreme Judicial Court.