

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF APPELLATE PROCEDURE

2021 Me. Rules 05

Effective: October 8, 2021

All of the Justices concurring therein, the following amendments to the Maine Rules of Appellate Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 1B of the Maine Rules of Appellate Procedure is amended to read as follows:

Unless specified to the contrary by statute or these Rules, the following words, whenever used in these Rules shall have the following meanings:

....

(e) The term “docket entries” shall include case information maintained by the trial court clerk in the registry of actions.

Advisory Note – October 2021

Rule 1B is amended by adding a definition for the term “docket entries” that includes case information maintained by the trial court clerk in the registry of actions in a court or region that has implemented an electronic case management and filing system.

2. Rule 2A(b)-(g) of the Maine Rules of Appellate Procedure is amended to read as follows:

(b) Notice and Appearances.

(1) Notice. The appeal shall be commenced by filing a notice of appeal with the clerk of the trial court from which the appeal is taken. A notice of appeal shall be filed in conformity with the rules then in effect for the trial court from which the appeal is taken. The notice of appeal shall be signed by each appellant or the appellant's attorney. The notice of appeal shall specify the party taking the appeal, designate the judgment or part thereof appealed from, and notify the other parties of the need to file an appearance to be heard on the appeal. A copy of the notice of appeal shall be served on the other parties to the trial court proceeding.

....

(c) Filing Fee.

(1) No filing fee is required for appeals in criminal cases. The required filing fee for appeals in civil cases shall be paid to the clerk of the trial court at the time of the filing of the notice of appeal, or pursuant to M.R.E.C.S. 39 if applicable in the trial court from which the appeal is taken.

(2) A person who believes that he or she cannot afford to pay the filing fee may file a request to have the fee waived pursuant to M.R. Civ. P. 91 and M.R.E.C.S. 39(B) if applicable in the trial court from which the appeal is taken. If the request to have the filing fee waived is denied, the party who sought the waiver shall pay the filing fee in full within 7 days after the entry of the order denying the request for waiver of the filing fee, or the appeal shall be dismissed by the trial court.

(d) Transcript Order. If an appellant intends to include any portions of the transcript in the record on appeal, that appellant must order those portions either by using the online transcript order form found on the Judicial Branch website, www.courts.maine.gov/maine_courts/transcription/online.html www.courts.maine.gov/programs/oto/index.html, or by using the official Judicial Branch paper order form.

(1) To use the online transcript order form on the Judicial Branch website, the appellant must

(A) complete all information required on the online form, including the dates of the proceedings that the appellant wishes to have transcribed;

~~(B) print the confirmation sheet from the online form;~~

~~(CB)~~ file the ~~printed~~ confirmation sheet with the notice of appeal; and

~~(DC)~~ serve a copy of the ~~printed~~ confirmation sheet on the other parties.

(2) To use the official Judicial Branch paper transcript order form, the appellant must

(A) complete all required information on the form, including the dates of the proceedings that the appellant wishes to have transcribed;

(B) sign the form;

(C) file the ~~original~~ form with the notice of appeal; and

(D) serve a copy of the form on the other parties.

(e) Insufficient Filing. If a notice of appeal or transcript order is not signed, the appeal shall not be accepted for filing. If the appeal is not accepted for filing, the provisions of M.R.E.C.S. 35(D)-(E) shall control if applicable in the trial court from which the appeal is taken. If the Maine Rules of Electronic Court Systems do not apply in the trial court, the trial court clerk shall docket the receipt and return of the non-accepted documents, and then return all documents to the party who filed them. Documents that are returned to the party who filed them shall not be deemed as filed for the purpose of calculating compliance with time limits.

(f) Criminal Appeals: Particular Requirements.

....

(2) A notice of appeal filed by the State in a criminal case shall be accompanied by a written approval of the appeal signed by the Attorney General, pursuant to Rule 21(b), or a representation that the Attorney General

has approved the appeal and a written approval will be filed within 7 days. The State shall serve a copy of the written approval on the other parties, in addition to the notice of appeal and transcript order form as required by Rules 2A(b) and (d). The clerk of the trial court shall file the approval, note the filing in the criminal docket, and mail a date-stamped copy of the approval to the defendant or, if the defendant is represented by counsel, to the attorney for the defendant. If the Maine Rules of Electronic Court Systems apply in the trial court, the clerk of the trial court need not take the actions set forth in the preceding sentence.

(g) Trial Court Clerk Actions.

(1) The trial court clerk shall notify ~~mail a date-stamped copy of the notice of appeal and transcript order form to~~ (A) the Clerk of the Law Court and; (B) the court reporter or Office of Transcript Operations of the filing of the notice of appeal and transcript order form. The trial court clerk shall cause the notice of appeal and transcript order form to be transmitted to; ~~and~~ (C) the attorney of record of each party other than the appellant, or, if a party is not represented by an attorney, then to the last known address of that party. This notification is sufficient notwithstanding the death or incapacity of the party or of the party's attorney prior to or subsequent to the mailing of the notification.

(2) Unless the notice of appeal and transcript order form are transmitted to the attorneys of record or parties not represented by an attorney pursuant to the Maine Rules of Electronic Court Systems, ~~The~~ clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing. ~~The clerk shall then mail a copy of the docket sheet to the Clerk of the Law Court.~~

(3) The trial court clerk's failure to ~~mail the notice of appeal as indicated in~~ comply with Rule 2A(g)(1) does not affect the validity of the appeal, but no appeal shall be deemed to be filed and commenced in the Law Court pursuant to Rule 3(a)(2) until the Clerk of the Law Court receives ~~the copy of the notification of the~~ notice of appeal from the trial court clerk.

(4) In any action based on the Maine Tort Claims Act, 14 M.R.S. §§ 8101 et seq., whether the action involves the State or a local government, the trial court clerk shall ~~mail a copy of any cause~~ any notice of appeal that is filed to be transmitted to the Attorney General at the same time as the notice is transmitted ~~trial court clerk mails that notice~~ to the parties to the action.

Advisory Note – October 2021

Rule 2A(b)-(g) is amended to recognize the implementation of an electronic case management and filing system by the Maine Judicial Branch and the adoption of the Maine Rules of Electronic Court Systems.

3. Rule 6(a)-(b) of the Maine Rules of Appellate Procedure is amended to read as follows:

(a) Filing the Record.

(1) Twenty-Eight-Day Retention Period. After receipt of a notice of appeal and, when required, the requisite fee or waiver of payment of fees, the trial court clerk shall ~~retain the record for 28 days. The trial court clerk shall file-transmit~~ the trial court record ~~with-to~~ the Clerk of the Law Court ~~no later than 7 days after the expiration of the 28-day retention period~~ no earlier than 28 days and no later than 35 days after the filing of the notice of appeal. The 28-day ~~retention~~ period does not apply to extradition appeals. The trial court clerk shall file the trial court record in an extradition appeal with the Clerk of the Law Court within 7 days following the filing of the notice of appeal.

(2) Effect of Certain Post-Judgment Motions. If, during the ~~28-day retention period~~ 28 days following the filing of the notice of appeal, a timely post-judgment motion listed in Rule 2B(b)(2) or 2B(c)(2) is filed, the trial court clerk shall ~~retain the file-not transmit the trial court record to the Clerk of the Law Court~~ until the trial court has acted on the motion. The trial court clerk shall file the trial court record with the Clerk of the Law Court no later than 7 days after the entry of the order on that post-judgment motion.

(3) ~~Additional Temporary Retention of the Record by Order of the Trial Court.~~ Notwithstanding the provisions of subsections (1) and (2) of this Rule, if the record or any part thereof is required in the trial court for use pending the appeal, the trial court may order, or the parties may stipulate, that the clerk of the trial court shall retain the record or parts thereof, subject to the request of the Law Court. Upon entry of such an order or stipulation, the trial court clerk shall transmit to the Clerk of the Law Court a copy of the order or stipulation. Upon filing in the Law Court of the brief of the appellee, or at such earlier time as the parties may agree or the Law Court may order, the appellant shall request the clerk of the trial court to transmit the record to the Clerk of the Law Court.

....

(b) Contents of the Record.

The trial court clerk’s record shall include a copy of the complete docket entries and originals of the following, or, if the Maine Rules of Electronic Court Systems apply, the following as they appear in the electronic case file: any opinion, order, or judgment by the trial court; the pleadings; motions and actions thereon; documentary exhibits; a list of retained exhibits; correspondence between the parties and the trial court; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; and the notice of appeal with the date of filing.

Advisory Note – October 2021

Rule 6(a)-(b) is amended to recognize the implementation of an electronic case management and filing system by the Maine Judicial Branch and the adoption of the Maine Rules of Electronic Court Systems.

4. Rule 7(b) of the Maine Rules of Appellate Procedure is amended to read as follows:

(b) Time for Filing Briefs.

(1) Track A Appeals. In a Track A appeal, the appellant shall file the appellant’s brief within 28 days (4 weeks) after the date that the record on appeal is complete. The appellee shall file the appellee’s brief within 56 days (8 weeks) after the date that the record on appeal is complete, and the appellant may file a reply brief within 14 days after the date that the appellee’s brief is filed.

An appeal is a Track A appeal if it results from a trial court judgment that:

....

(L) resolves an appeal from an agency’s denial of a request pursuant to the Freedom of Access Act, 1 M.R.S. § 400 et seq.; or

(M) results in a juvenile adjudication or disposition pursuant to 15 M.R.S. § ~~3402.3310~~; or

(N) either binds or does not bind a juvenile over for adult prosecution pursuant to 15 M.R.S. § 3101(4).

Advisory Note – October 2021

Rule 7(b) is amended to add appeals of bind-over decisions in juvenile criminal matters to the list of appeals subject to expedited briefing and to correct the statutory reference to juvenile adjudication and disposition proceedings.

5. Rule 7A(a)(2)(C) of the Maine Rules of Appellate Procedure is amended to read as follows:

(2) A brief shall not include:

....

(C) except for a brief prepared by the State in a child protective case, any documents or information made confidential by statute or court order, or made “nonpublic” by the Maine Rules of Electronic Court Systems. Documents or information precluded by this section may be included in a brief only with leave of the Court.

Advisory Note – October 2021

Rule 7A(a)(2)(C) is amended to recognize the implementation of an electronic case management and filing system by the Maine Judicial Branch and the adoption of the Maine Rules of Electronic Court Systems.

6. Rule 12B(c)-(d) of the Maine Rules of Appellate Procedure is amended to read as follows:

(c) Briefs. The briefs filed with the Law Court, other than briefs in appeals from ~~child protection proceedings~~ matters listed in subsection (d)(1)-(5) below, shall be available for inspection and copying by any person.

(d) Appendices. The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters: (1) an appeal from a child protection proceeding; (2) proceedings involving an adoption or guardianship

or a petition for adoption or guardianship; (3) juvenile proceedings in which the record is sealed in the trial court; (4) any proceeding in which the care, custody, and support of a minor child is an issue; and (5) any proceeding in which a document or information that is confidential, ~~deemed nonpublic, by statute~~—or was filed under seal in the trial court by statute, court rule, administrative order, or trial court order, is contained in the appendix.

~~No appendix shall be filed as “under seal” or “confidential” except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4).~~

Any brief or appendix filed in a matter listed in this subsection (1)-(5) shall automatically be labeled and filed as “under seal” or “confidential” unless the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4) orders otherwise.

Advisory Note – October 2021

Rule 12B(c)-(d) is amended to provide consistency in public access to briefs and appendices filed in matters that are confidential, nonpublic, or filed under seal in the trial court pursuant to statute, administrative order, or rule.

Dated: October 8, 2021

FOR THE COURT,*

_____/s/_____
VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
THOMAS E. HUMPHREY
ANDREW M. HORTON
CATHERINE R. CONNORS
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.