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Substantial Amendments to the Massachusetts Rules of Appellate Procedure Approved by SJC

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The Massachusetts Supreme Judicial Court recently approved amendments to the Massachusetts Rules of Appellate Procedure (the "Rules"). This marks the first time since 1974 that the Rules have been fully reviewed and revised – all other changes in the past 44 years being isolated and narrow.

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The approved amendments were the result of work that began in 2015 by a subcommittee appointed by the Supreme Judicial Court Standing Advisory Committee on the Rules of Civil and Appellate Procedure, in conjunction with the Standing Advisory Committee on the Rules of Criminal Procedure. After public comments in 2017 led to additional revisions, the amendments were submitted for approval.

In general, the amendments are designed to make the Rules more easily understood, better facilitate the just and expeditious resolution of appeals, clarify and simply filing and formatting requirements, incorporate existing practices and procedures, and facilitate new paperless processes. While the subcommittee intentionally retained much of the existing language, style, and procedures, practitioners will note that certain amendments track updated Federal rules.

Certain global changes were made throughout the Rules. These global changes include: gender neutral phrases were favored over traditional gendered pronouns (e.g. converting "his' to "the party's"), provisions dealing with obsolete technologies and processes were removed, lengthy paragraphs and sentences were broken out into smaller segments, and sections were renumbered for consistency.

Two of the global changes to the Rules were more significant than the others. First, deadlines are now mostly in increments of 7 days. This means that most 10-day deadlines are now 14-day deadlines, and most 20-day deadlines are now 21-day deadlines. These changes decrease the likelihood that deadlines will fall on weekends, and generally increase time permitted for filings. For example, in Rule 11(c), a response to an application for direct appellate review is now due 14 days (not 10) after the filing of the application.

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The second most notable global change is that the new Rules favor word count limits with proportionally spaced fonts as an alternative to page limits. For example, Rule 20(a)(2)(A) now limits the length of principal briefs to "not contain more than 50 pages, or be produced in a proportionally spaced font and not contain more than 11,000 words." Rule 16(k) now requires that the traditional certification "shall specify how compliance with the applicable length limit of Rule 20 was ascertained…" and provides two methods for complying with said certification. The subcommittee's preference for word count limits is intended to eliminate the considerable time parties spend using formatting devices solely to comply with the current page limits and is consistent with the approach of the Federal courts. The new limits allow roughly the same amount of content in briefs as the current Massachusetts rules permit.

In additional to these global changes are extensive changes to most of the individual Rules. A few of the more notable amendments include:

- Rule 1(c). Expanded the definition of "first class mail" to include "or its equivalent." This allows for the common practice of using third-party commercial carriers.
- Rule 3(a). The phrase "with service upon all parties" is added to clarify the appellant's duty to serve all parties when filing a notice of appeal, even though the clerk is still required to serve notice on the parties as well.
- Rule 4(a)(2)(C). Clarifies that only a motion under Rule 60(b), and not Rule 60(a), will toll the time period for filing an appeal.
- Rules 4 and 13. Establish the "inmate mailbox rule" for pro se litigants confined in an institution, recognizing their inherent limited ability to effectuate a "mailing" on a certain day.
- Rules 8 and 9. These rules were heavily revised to modernize and streamline the record assembly and transcript production process. Appellants must file with the clerk and serve on all parties within 14 days an order of all relevant proceedings to be transcribed. Appellees must order the transcript of any additional proceedings within 14 days of the appellant's order. There is also now a 21 day deadline for the clerk of the lower court to complete the assembly of the record, and the new Rules provide a checklist of items the lower court clerk must include.
- Rule 10(d). Clarifies that if counsel does not intend to represent a client on appeal, counsel must file a motion to withdraw. Preferably this motion would be filed in the lower court but after the appeal has been docketed it must be filed at the appellate court.
- Rule 13. Allows for electronic filing, and for electronic service through eFileMA.com or email with the consent of the party being served. The requirements of the certificate of service have been modified as well to reflect these new procedures.

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- Rule 15. Encourages parties to state in their motions whether the motion is assented to or opposed, and if opposed, whether opposing party intends to file a response.
- Rule 16. Reorganized extensively into a thorough checklist of what parties should include in their briefs. Notably, appellees must now include an addendum even if the materials included were already included in the appellant's addendum (see 16(b)), a party may only file one brief in response to multiple briefs meaning it may not file separate response briefs to each brief (see 16(j)), and there is now a rule for filing amended briefs (see 16(n)).
- Rules 17 and 18. Revised extensively to include checklists for what should be included in an Amicus Curiae brief and an Appendix, respectively. Rule 17 is further revised to clarify deadlines for and information which must be included in an Amicus Curiae brief.
- Rules 18(b)(5) and 18(g). Specifies that no supplemental appendix or amendment to an appendix shall be permitted without making a motion for the same.
- Rule 20(a)(3). Increases the page/word limit on an appellee/cross-appellant's brief to account for the fact that they must reply to the appellant's brief as well as lay out their own cross-appeal.
- Rule 26(d). Added language indicating that certain administrative and convenience fees would be charged for electronic filings.

The new Rules take effect on March 1, 2019, but parties are invited to begin filing compliant documents immediately on a voluntary basis.

Anyone with questions can contact Rich May, P.C. attorney Nathaniel Donoghue.

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