

# THE AMENDED MASSACHUSETTS RULES OF APPELLATE PROCEDURE

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## Effective date

- March 1, 2019
- The appellate courts are already accepting briefs formatted using the new rules.
  - Parties may now elect to use a word count and proportionally spaced font instead of a page limit.
  - Parties may also file 7 copies of a brief instead of an original and 17 copies in the Supreme Judicial Court.
- The amendments affecting time deadlines, each of which provides more time to perform an act than the existing rules, will not become effective until March 1, 2019. Parties must continue to follow all time deadlines until March 1, 2019.

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**Rule 8(b): Ordering the transcript**

- In criminal cases, no duty on clerk to order transcripts.
- In civil cases, no more designation of transcript to order.

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**Rule 8(b)(1)(A): Transcripts orders, appellant**

Appellant has 14 days from filing of the notice of appeal to

- (1) order the transcript and file a copy of the transcript order form with the court; or
- (2) certify that no lower court proceedings are relevant to the appeal; or
- (3) certify that the transcript of all proceedings relevant to the appeal are on file with the court.

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**Rule 8(b)(1)(A): Transcript orders, appellee**

Appellee has 14 days from the **service** of the appellant's transcript order or certifications to order additional transcripts and to file the transcript order form with the court.

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**Order 4(b)(i): FTR appellant orders**

- Appellant will use Court.fm to generate an online transcript order form.
- Court.fm will produce a copy of the form for the appellant.
- Appellant will file a copy with the court.
- Appellant will serve a copy on all other parties.
- OTS will retrieve the recording and submit it to a transcriber.

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**Order 4(b)(ii): FTR appellee orders**

- Appellee will use Court.fm to generate an online transcript order form.
- Court.fm will produce a copy of the form for the appellee.
- Appellee will file a copy with the court.
- Appellee will serve a copy on all other parties.
- OTS will retrieve the recording and submit it to a transcriber.

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**Order 4(c)(i): JAVS appellant orders**

- Executive Office of the Trial Court will create a Transcript Order Form.
- Appellant will fill out the Transcript Order Form and attach a copy of the docket sheet.
- Appellant will file the Transcript Order Form with the court.
- Appellant will serve a copy on all other parties.
- Clerk will transmit the Transcript Order Form to OTS through electronic mail.
- Clerk will mail the recording to OTS.
- OTS will submit the recording to a transcriber.

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### Order 4(c)(ii): JAVS appellee orders

- Appellee will fill out the Transcript Order Form.
- Appellee will file the Transcript Order Form with the court.
- Appellee will serve a copy on all other parties.
- Clerk will transmit the Transcript Order Form to OTS through electronic mail.
- Clerk will mail the recording to OTS.
- OTS will submit the recording to a transcriber.

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### Rule 8(b)(1)(C): Payment for transcript

- Appellant pays for all transcription, regardless of who ordered it.
- Appellant pays for all copies of the transcript, for the clerk, for the appellant, or for the appellee.
- “unless ordered otherwise by the lower court”

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### Order 4(b)(iii) & (c)(iii): Indigent parties

- In civil cases, where the court has ordered that the Commonwealth pay for the transcript, the indigent appellant must transmit the court order to OTS (FTR) or attach it to the Transcript Order Form (JAVS).
- In criminal direct appeals, there is no need for an indigent appellant to attach a court order.
- In criminal collateral appeals, there is no need for an indigent appellant to attach a court order if the transcript covers 9 hours or less.
- In criminal collateral appeals, if the transcript covers more than 9 hours, the indigent appellant must obtain a court order and transmit it to OTS (FTR) or attach it (JAVS).

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**Order 4(b)(iv) & 4(c)(iv): Impounded material**

If a party wants an impounded hearing transcribed,  
(1) the party must obtain a court order; and  
(2) the party must transmit the court order to OTS (FTR) or attach it to the Transcript Order Form (JAVS).

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**Order 8(b): Transmission of the transcript**

- Transcriber shall transmit the completed transcript in PDF form to the clerk.
- Transcriber shall simultaneously transmit the transcript in PDF form to all parties.
- In criminal cases, Clerk is responsible only for transmitting the PDF transcript to the Appeals Court.

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**Rule 8(b)(3): Notification of receipt of transcript**

"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."

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**Rule 8(c): Motion to reconstruct the record**

- If a proceeding is unavailable, appellant may file a motion to reconstruct the record within 14 days of the filing of the notice of appeal.
- Judge then sets a schedule for reconstructing the record.

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**Rule 8(d): Agreed statement as to the record on appeal**

- Parties intending to submit an Agreed Statement as to the Record on Appeal must notify the clerk in writing within 14 days of the filing of the notice of appeal.
- Parties must submit the Agreed Statement to the judge within 28 days of the notification to the clerk.
- Judge may approve, with or without additions.

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**Rule 8(d)(3): Transcripts for motions for new trial**

- Within 14 days of filing of notice of appeal, appellant must:
- (1) provide the clerk with a PDF of the transcript of the lower court proceedings; or
  - (2) provide the clerk with a statement that such a transcript "may not be obtained with due diligence, is not relevant, or has been ordered and not yet produced"; or
  - (3) file a certification that a copy of the transcript is available in the Appeals Court.

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### Old Rule 9(a)

"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 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."

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### Rule 9(e): Assembly deadline

- Assembly of the record and transmission to parties and Appeals Court within 21 days of
  - (1) receipt of all transcripts
  - (2) receipt of notice that no transcripts will be ordered
  - (3) judge's approval of agreed statement.
- But may always wait until the time to cross-appeal has passed.

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### Rule 3(a): Service of notice of appeal

- Parties must now serve notices of appeal on other parties.
- Rule 3(d): Clerk is still required to serve the notice of appeal on the other parties, as well.

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### Rule 3(e): Change of counsel

- In indigent criminal cases, trial counsel remains counsel of record until a successor is appointed.
- Trial court counsel must notify CPCS on the day the notice of appeal is filed.
- Successor counsel shall promptly file a notice of appearance.

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### Rule 4(a)(2)-(3): Notice of appeal tolling in civil cases

- As before, a timely motion under Mass. R. Civ. P. 50(b) for judgment, under Mass. R. Civ. P. 52(b) to amend or make additional findings of facts, under Mass. R. Civ. P. 59 to alter or amend a judgment, or under Mass. R. Civ. P. 59 for a new trial will restart the time to appeal upon disposition.
- Of Mass. R. Civ. P. 60 motions, only a Mass. R. Civ. P. 60(b) motion for relief from judgment will restart the time.
- If multiple motions are filed, the time to file an appeal runs for all parties from the entry of the order disposing of the last remaining **timely** motion.
- A notice of appeal filed before an **untimely** motion remains effective.

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### Rule 4(d) and 13(a)(2): Prison mailbox rule

- Codifies Commonwealth v. Hartsgrove, 407 Mass. 441, 445 (1990).
- Applies to criminal and civil cases.
- Notice of appeal deposited by a prisoner in a prison mail system within the time to file a notice of appeal is timely.
- Prisoner must attach a signed certificate of filing setting out the date of deposit. If the prisoner fails to attach the certificate, the court may permit a later filing of the certificate.
- Time for cross-appeal begins when clerk enters the notice of appeal.
- Rule 13(a)(2) extends the prison mailbox rule to other documents (e.g., motions, responses, and briefs) filed by prisoners in an appellate court. The time period to respond runs from when the appellate court docketed the document.

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**Rule 10(a)(1): Docketing the appeal in civil cases**

- Parties now have 14 days to docket the appeal, not 10 days.
- The timeframe commences with receipt of the notice of assembly.
- When a payment/request for waiver is made by first class mail or its equivalent, it is timely if accompanied by a certificate attesting that the day of mailing was within 14 days of receipt of the notice of assembly.



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**Rule 10(a)(4): Certain constitutional claims in civil cases**

Where the constitutionality of an act of the legislature is at issue in an appeal and neither the Commonwealth nor an officer, agency, or employee thereof is a party to the appeal, the party asserting the unconstitutionality of the act must notify the AG within 14 days of docketing the appeal.

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**Rule 10(d): Withdrawal of counsel**

- If counsel is not representing a party on appeal, counsel must file a motion to withdraw in the lower court ASAP.
- After the appeal is docketed in an appellate court, the motion to withdraw must be filed in that appellate court.

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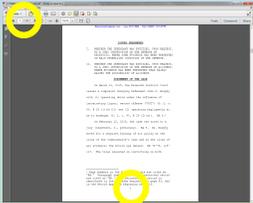
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**Rule 20(a)(4)-(5): Page numbers**

Intended to facilitate electronic review of documents



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**Rule 20(a)(5): Format, pagination, and length of appendix**

- Must be separately bound from brief.
- **Pagination**
  - Cover is page 1 and numbered consecutively through the volume's final page.
  - Restart pagination at the beginning of each subsequent volume (e.g., RAI/55 - meaning Record Appendix volume II at page 55).
- **Table of contents**
  - First volume must include a complete table of contents for all volumes.
  - Each subsequent volume must include only a table of contents for that specific volume.
  - Table of contents must list all principal/subsidiary documents (e.g., summary judgment packages, administrative records must list individual documents contained therein).
- **Exhibits**
  - Must be of high quality and reproduced in color if color is relevant.
  - Color photographs marked or admitted as an exhibit must be reproduced in color.
  - Color coded court forms may be reproduced in black and white.

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**Rule 19(d): Fewer copies required**

- **Supreme Judicial Court**
  - 7 brief, 7 appendix, 2 exhibits, 2 transcript
- **Appeals Court**
  - 4 brief, 4 appendix, 2 exhibits, 1 transcript
- **Appeals transferred to Supreme Judicial Court**
  - Rules 19(d)(1)(B)(ii) and 19(d)(2)(B)(ii) retain the prior requirement that where an appeal is transferred to the Supreme Judicial Court after briefs, appendices, exhibits, or transcripts were filed in the Appeals Court, the additional required copies must be "promptly filed" with the clerk of the Supreme Judicial Court.

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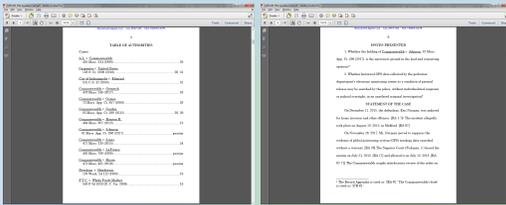
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### Word count alternative to the page limits




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### Word count alternative to the page limits

- Proportionally spaced font (e.g., Times New Roman)
  - 11,000 words for principal brief (non-cross appeal)
  - 4,500 words for reply brief
- Font size 14 point or larger
- All margins 1 inch or larger
- Certificate of compliance

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### Word Limits

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

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### Rules 16 and 18: Checklists

- Rule 16(a): Brief contents  
Shows the order each item should appear in the brief.
- Rule 16(a)(13): Addendum contents  
Includes in one location requirements from both prior Rule 16(a) and Rule 16(f).
- Rule 18(a)(1)(A): Record appendix contents  
Shows the order the documents should appear in the appendix.

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### Rule 16(a)-(c), Rule 21: Previously unreferenced requirements

- Rule 16(a)(2): Corporate disclosure statement (S.J.C. Rule 1:21)
- Rule 16(a)(10): Any request for attorney's fees and costs
- Rule 16(c): Prohibition against new issues in reply brief
- Rule 21: Protection of personal identifying information (S.J.C. Rule 1:24)

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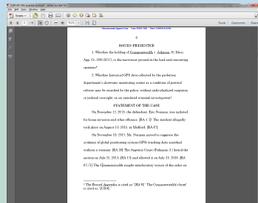
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### Rule 16(a)(6): Statement of the case

The statement of the case must include reference to the record appendix or transcript.



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**Rule 16(a)(9)(B): Statement of applicable standard(s) of review**

- "(9) Argument. The argument shall contain: . . . (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)."
- New Requirement (derived from Fed. R. App. P. 28)
- Critical Factor to Every Appeal

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**Rule 16(a)(8): Summary of the argument**

- Old  
required if argument exceeded **24 pages**
- New  
required if argument exceeds **20 pages** or 4,500 words

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**Rule 16(a)(13): Addendum**

- Table of contents to addendum with page references
- Typed copy of any handwritten endorsement by the lower court (typed notice of docket entry provided by lower court clerk is sufficient)
- Entire copy of any unpublished decision cited in the brief (1:28's, Superior Court decisions, etc.)

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### Rule 16(k): Certificate of compliance

- Must certify how compliance with the applicable length limit was ascertained.
- “This brief complies with the length and typeface limitations in Rule 20(a)(2) and 20(a)(4) because it is in the proportional font Times New Roman at size 14, and contains 9,262 total words in the parts of the brief required by Rule 16(a)(3)—(9) as counted using the word count feature of Microsoft Word 2013.”

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### Rule 16(b): Appellee brief

- Statements of the issues, case, facts, and applicable standard(s) of review need not be made unless the appellee is dissatisfied with the statements of the appellant.
- Appellee must include an addendum and include the same items as the appellant even if the items were included in the appellant’s addendum.
- Rule 19(e): Appellee must timely notify the court and all parties in writing if it does not intend to file a brief.

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### Rule 20(a)(3): Briefing in cross appeals

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| <ul style="list-style-type: none"> <li>• Appellant’s principal brief:           <ul style="list-style-type: none"> <li>• monospaced font; maximum 50 pages or</li> <li>• proportionally spaced font; maximum 11,000 words</li> </ul> </li> </ul>             | <ul style="list-style-type: none"> <li>• Appellant’s response and reply brief:           <ul style="list-style-type: none"> <li>• monospaced font; maximum 50 pages or</li> <li>• proportionally spaced font; maximum 11,000 words</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• Appellee’s principal and response brief:           <ul style="list-style-type: none"> <li>• monospaced font; maximum 60 pages or</li> <li>• proportionally spaced font; maximum 13,000 words</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Appellee’s reply brief:           <ul style="list-style-type: none"> <li>• monospaced font; maximum 20 pages or</li> <li>• proportionally spaced font; maximum 4,500 words</li> </ul> </li> </ul>                |

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### Rule 18(a)(1)(A): Appendix content

- the docket entries in the lower court proceedings;
- **any order of impoundment or confidentiality from the lower court; and**
- in chronological order of filing in the lower court:
  - any parts of the record relied upon in the brief, and in a criminal case, a copy of the complaint or indictment;
  - any document, or portion thereof, filed in the case relating to an issue which is to be argued on appeal;
  - **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;**
  - the judgment, decree, order, or adjudication in question; and
  - **the notice(s) of appeal.**

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### Rule 18(a)(2): Special provisions for the appendix in criminal cases

- Appellee **must** include an appendix with record material relied upon in its brief but not in the appellant's appendix.
- Any party **may** reproduce relevant portions of the transcript in appendix.

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### Prior Rules 18(c) and (f): Deferred appendix and appeal on original record

- Deleted from rules
- Rarely requested or allowed
- Appendix is critical to appellate courts' review.
- In deleting these provisions, the committee contemplated Mass. R. App. P. 2, governing suspension of rules, can be used by an appellate court or single justice to enter an order deferring or omitting the requirement of an appendix in an appropriate case. See Reporter's Notes (2019) to Mass. R. App. P. 18.

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**Rule 17(a): Amicus briefs - filing as of right**

- “when solicited by the appellate court”
  - Listserv, courts’ websites
  - Join the listserv: send an email to commonwealthclerk-join@jud.state.ma.us.
- “Commonwealth or its officer or agency”

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**Rule 17(b): Amicus briefs - due date and response**

- Old  
“Any amicus curiae shall file its brief 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 . . . .”
- New  
**21 days** before the date of oral argument
- Response - Any party may seek leave to respond to any amicus brief.

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**Rule 17(c): Amicus briefs - format and content of brief**

- Must be formatted in accordance with Rule 20 like all other briefs.  
35 pages or 7,500 word limit
- But only specific content requirements from Rule 16 apply.  
No need to include statements of the issues, case, facts, or applicable standard(s) of review.

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### Rule 17(c)(5): Amicus briefs - disclosure requirements

- Rule 17(c)(5) requires certain disclosures about the amicus curiae’s interest in the case.  
Include after table of authorities
- Not intended to require disclosure of mere coordination of arguments or sharing of drafts.
- Modeled after Fed. R. App. P. 29 but Rule 17(c)(5)(D) incorporates the requirement imposed by SJC case law.
- Requirements do not apply to Commonwealth.

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### Rule 22(c)(2): Post argument filings

Rule 22(c)(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.

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### Rule 23: Notice of decision; issuance of rescript

- New definition of “decision” in Rule 1: “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.
- The definition was added to minimize confusion of parties regarding the decision released to the parties and the issuance of the rescript (with a copy of the decision) to the lower court 28 days after release of the decision.
- It is the date of the release of the decision that starts the 14 day clock for filing a motion for reconsideration or modification of decision (Rule 27) and 21 day clock for filing an application for further appellate review (Rule 27.1).
- Time period to file an application for further appellate review changed from 20 to 21 days.

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### Rule 27: Motion for reconsideration or modification of decision

- These filings are no longer formatted as a letter addressed to the senior justice.
- Instead, they should be formatted as a motion and filed in the appellate court clerk's office.
- The page limit is 10 pages or 2,000 words.
- "A party seeking further appellate review shall promptly notify the Supreme Judicial Court of any action taken on the motion."

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### Rule 27(c): Response to motion for reconsideration or modification of decision

Rule 27(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. . . .

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### Rule 27.1: Further appellate review

#### New due dates

- Rule 27.1(a): Application
  - Old: 20 days
  - New: 21 days
- Rule 27.1(c): Response
  - Old: 10 days
  - New: 14 days

#### Fewer required copies

- Old
  - SJC: an original and seventeen copies of each application or opposition
  - Appeals Court: one copy of each application or opposition
- New
  - SJC: one copy (no paper copy if e-filed) of each application or response
  - Appeals Court: no copy

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**Rule 28(b): Proceedings after appeal in 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.”
- “[U]nless 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.”

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**Rule 29(b): Voluntary dismissal of an appeal or other proceeding in an appellate court**

- Revised to specify the procedures for dismissing an appeal in both civil and criminal cases.
- In criminal cases in which the defendant is the appellant, Rule 29(b) (2) provides that it is sufficient for purposes of the rule that an attestation by counsel for the defendant, that the defendant assents to the court’s dismissal of the appeal with prejudice, is filed.
- If the motion states that the appeal is moot, an affidavit by the defendant is not required.

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**Boston Bar Journal Article**

- <https://bostonbarjournal.com/2018/11/06/extensive-amendments-to-the-massachusetts-rules-of-appellate-procedure-effective-in-2019/>

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