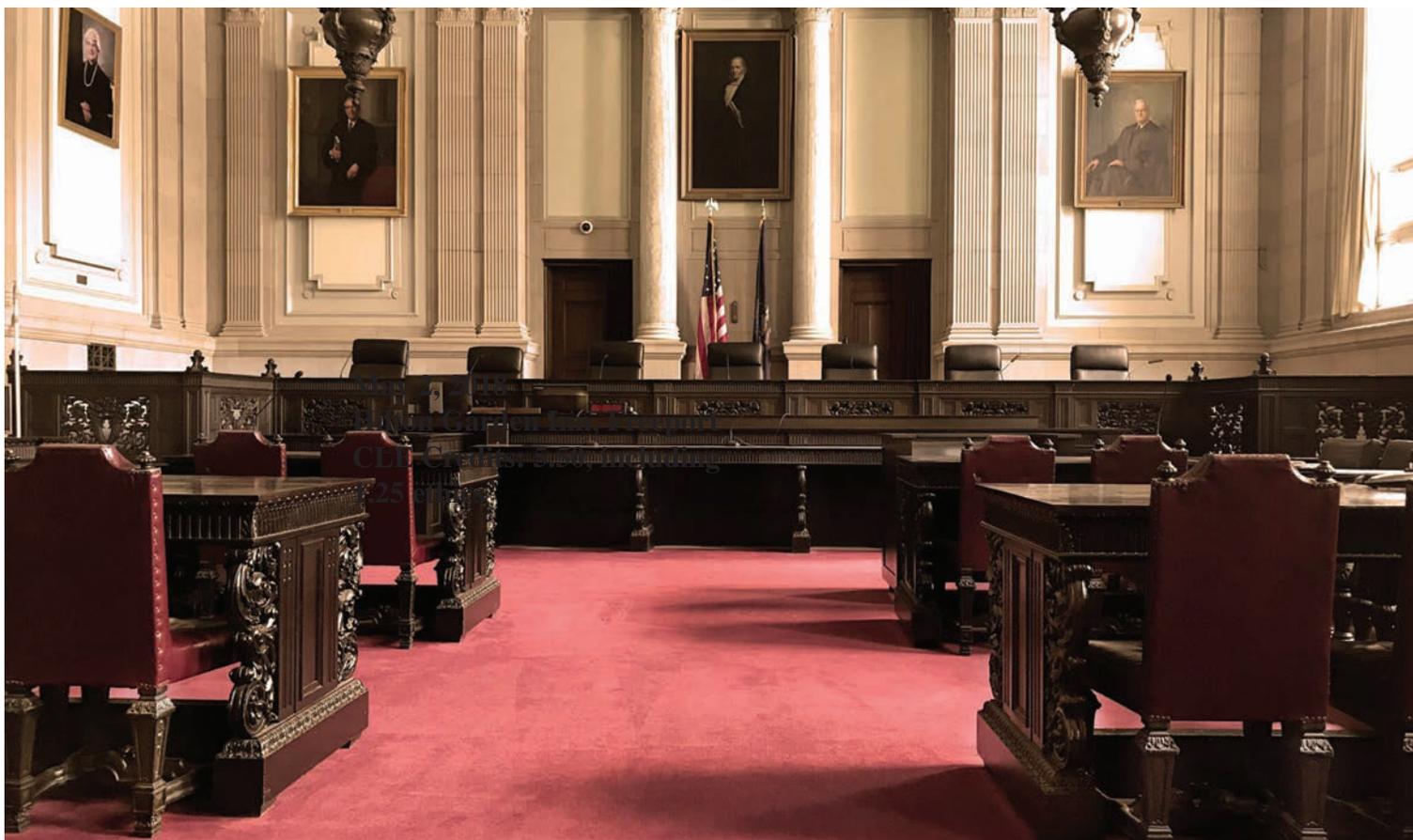


NEW DIRECTIONS IN APPELLATE PRACTICE



May 2, 2018
Hilton Garden Inn, Freeport

CLE Credits: 5.50, including 1.25 ethics



This program has been approved for practice and procedure credit under Maine's reciprocal admission rule.

The Maine Supreme Judicial Court approved a restyling of the Maine Rules of Appellate Procedure, effective for appeals filed on and after September 1, 2017. The restyling changes improved the internal organization and adopted many clarifications and substantive changes in the Rules, including: clarification of the deadlines for filing appeals, adjustment of the ways length limits for briefs may be calculated, greater specificity in what may—and may not—be included in briefs and the appendix, and increased requirements for electronic filing of briefs and transcripts.

In addition to the restyling of the Appellate Rules, the Judicial Branch is working toward implementation of an electronic filing system that will cover creation, filing, retention, and review of records in all the courts, including the Supreme Judicial Court. Electronic filing will require further changes in appellate practice relating to record creation and document preparation, organization, filing, review and accessibility. This process must respect the important goals of the Judicial Branch to promote access to justice for all, integrity and transparency of court proceedings, and protection of privacy of personal information so that individuals who must come before the courts may appear without concern that availability of their private information may invite harassment, stalking, identity theft or other unintended consequences.

This program will address these issues in separate sessions moderated by justices of the Maine Supreme Judicial Court. While discussing new directions, the discussions may also invite questions, comments and suggestions by program attendees. Written materials may also be prepared supporting individual presentations in most sessions.

Schedule and Faculty

8:15 REGISTRATION

9:00 INTRODUCTION

To introduce the program, Chief Justice Saufley will outline the changes developed in the restyling of the Maine Rules of Appellate Procedure, issues the Judicial Branch anticipates needing to address as it moves towards electronic filing, and outreach efforts, including oral arguments at high schools that the courts are engaging in to promote public understanding of judicial processes in our constitutional system. The Chief Justice's presentation will be supported by written materials, including: the order adopting the restyled Maine Rules of Appellate Procedure with an introduction listing the 28 substantive changes adopted in the Rules, the restyled Rules themselves, and Restyling Notes addressing implementation of the restyled Rules.

The Hon. Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

9:20 PROPER MOTION PRACTICE, CREATION OF THE RECORD OF THE TRIAL COURT PROCEEDINGS, AND DEVELOPMENT OF THE APPENDIX

This session will discuss preparation of the trial court record and the relative responsibilities of the trial court clerk's office and appellants to ensure that an adequate record for appellate review is prepared. Included will be a discussion of motions that may be required relating to timing and extensions of time for filing appeals; efforts to supplement the record, if any are needed; and practice relating to filing and organization of the appendix and enforcement of the rules regarding preparation of the appendix.

The Hon. Ellen A. Gorman, Associate Justice, Maine Supreme Judicial Court (Moderator)

Matthew E. Pollack, Esq., Executive Clerk of the Maine Supreme Judicial Court

Rick Record, Director of Court Services

10:30 BREAK

10:45 ORAL ARGUMENT

This presentation will focus on good practices (and what to avoid) in oral argument and consideration of how changes in the technology of briefing and record preparation may cause or lead to changes in current oral argument practices.

The Hon. Joseph M. Jabar, Associate Justice, Maine Supreme Judicial Court (Moderator)

11:30 BRIEFING AND THE PROSPECTS FOR ELECTRONIC FILING, PART I

The restyling process changed the Rules for the preparation and filing of briefs, including more specificity in page limits, a word limit alternative to the page limit choice for calculating length of briefs, prohibitions on including certain items in briefs, and required electronic filing of one copy of each brief while continuing the filing of printed copies. Appeal briefing requirements are expected to change further with implementation of electronic filing. This program, divided into two sessions, will address good practices for issues with identification and briefing, changes resulting from the restyling of the Maine Rules of Appellate Procedure and the prospect for other changes, attorney ethics issues, and new directions as electronic filing is implemented in all courts. Justice Mead is the liaison to the Judicial Branch entities developing the electronic filing process.

The Hon. Andrew M. Mead, Associate Justice, Maine Supreme Judicial Court (Moderator)

The Hon. Ann M. Murray, Justice, Maine Superior Judicial Court

Sara T.S. Wolff, Esq., Associate Professor of Legal Writing, University of Maine School of Law

C. Daniel Wood, Esq., Lead Law Clerk, Maine Supreme Judicial Court

12:15 LUNCH (INCLUDED)

1:15 BRIEFING AND THE PROSPECTS FOR ELECTRONIC FILING, PART II (.50 ETHICS)

Continuation of the discussion that began at 11:30, with focus on the anticipated changes in practice, ethics issues, and perhaps even organization of the trial court record, the appendix, and briefs, as electronic filing, records retention, and record review is implemented. This portion of the program will be supported by written materials including:

1. The portions of the ABA Model Rules of Professional Conduct (not adopted in Maine) which recommend that lawyers have an ethical obligation to be aware of the benefits and risks of relevant technologies in their practices; and
2. ABA Formal Opinion # 477, addressing securing communication of protected client information.

Other written materials may be prepared.

The Hon. Andrew M. Mead, Associate Justice, Maine Supreme Judicial Court (Moderator)

The Hon. Ann M. Murray, Justice, Maine Superior Judicial Court

Sara T.S. Wolff, Esq., Associate Professor of Legal Writing, University of Maine School of Law

C. Daniel Wood, Esq., Lead Law Clerk, Maine Supreme Judicial Court

2:45 BREAK

2:55 APPELLATE ETHICS (.75 ETHICS)

Justice Hjelm, supported by the other presenters, will address ethical issues in appellate practice—including proper advocacy, client communication, protection and disclosure of client information, and choice of issues on appeal. This program will take approximately three-quarters of an hour. However, the entire program will include over an hour of discussion of ethics and professionalism issues, as some issues relating to ethics will be addressed as part of the discussion of new developments in previous sessions.

The Hon. Jeffrey L. Hjelm, Associate Justice, Maine Supreme Judicial Court (Moderator)

3:40 FINAL COMMENTS, OBSERVATIONS & REMAINING QUESTIONS

3:55 PROGRAM ADJOURNS

Questions and Issues for Appellate Practice

1. The courts will be moving to an electronic filing and record keeping system, including electronic access to court records, region by region, beginning in approximately a year. What issues related to electronic filing and record keeping may affect appellate practice and application of the appellate rules? Among issues to consider:
 - Separating out and limiting access to private, personal information in appellate records, briefs and appendices.
 - Will print-on-paper briefs and appendices be necessary and, if not required, might a “no print” provision have the practical effect of shifting the burden of printing from those who prepare and file documents to those who receive them?
 - What ethical issues may arise in a system where court documents are prepared, filed, preserved, and made available to various audiences electronically?
 - Assuring access to justice and fair participation in court proceedings, including appeals, to those who do not have ready access to and comfort with computers, the internet, and word processing programs.
 - How might a general practice of electronic preparation, filing, accessing, and maintaining documents and other court records require amendment of restyled M.R. App. P. 6(d) (electronic records preparation) and perhaps adoption of similar provisions applicable to briefs and the appendix?
 - Will an appendix continue to be necessary, or can a file be prepared to provide hyperlink access to the appendix documents in the court’s electronic file? Might there be a need to limit the number of documents referenced, so that other parties to an appeal and the reviewing court are not overburdened with documents to review in preparing and deciding an appeal?
 - Any other suggestions or comments regarding potential changes for appellate practice as we move to electronic filing, record keeping, and public access to court records.
2. The restyled Appellate Rules made some changes in the way transcripts are filed and utilized and the extent to which portions of transcripts may be reproduced in an appendix. For example, M.R. App. P. 6(c)(1) now specifies how electronic copies of transcripts are to be filed with the Law Court, and M.R. App. P. 8(g)(4) prohibits inclusion in the appendix of any portions of transcripts other than those portions of transcripts required by M.R. App. P. 8(d) or (e). Are there other changes in the way that transcripts are prepared and utilized that would improve current practice for the Court and for parties to appeals?
3. With amendment of M.R. App. P. 14(a) in the restyling, the mandate for most Law Court opinions issues promptly after the opinion is published. The capacity to seek reconsideration or further appeal is protected by M.R. App. P. 14(a)(3) addressing stay of the mandate. With these changes, should the provision in M.R. App. P. 14(a)(2) delaying issuance of the mandate for 14 days after an opinion in some civil appeals continue?
4. Any suggestions for adjustments to the restyled Rules as implementation of the restyled Rules has begun? Are any unanticipated problems being identified?

New Directions in Appellate Practice: May 2

Name _____ ME Bar # _____

Organization _____

Address _____

City _____ State _____ Zip _____

Tel # _____ Email Address _____

Please report my credits to: PA Bar # _____ *Non-members to report credits to PA: \$25**

PRE-REGISTRATION: Registration will close at **2 p.m. on May 1** to allow staff time to finalize the seminar.

WALK-IN REGISTRATIONS: Payment must be made at the time of registration. Walk-in registrants will receive a link to the program materials. We encourage you to pre-register if you want a link to download program materials prior to the program.

CANCELLATION POLICY: Full refunds will be given to those cancellations received by 4:30 p.m., 5 working days prior to the program. Registrants who cancel after this deadline but prior to the program date will be charged an administrative fee of \$15 per credit hour. A link to download and print the materials will be sent to those who fail to cancel in advance. Call 1-877-622-7554 with questions.

Registration Fees	
MSBA Member	<input type="checkbox"/> \$215
CLE Club Member	<input type="checkbox"/> \$145
Support Staff of CLE Club Member	<input type="checkbox"/> \$145
Non-Member	<input type="checkbox"/> \$295
Non-Member to report credits to Pennsylvania (live program only)	<input type="checkbox"/> \$ 25
Legal Support Staff/Paralegal	<input type="checkbox"/> \$155
MSBA Student Member	<input type="checkbox"/> \$ 40
CLE Club Membership: MSBA Members ONLY	
<i>From now through Sept. 30, 2018</i>	
I would like to join the CLE Club	<input type="checkbox"/> \$125

Program Materials
Please select your choice of materials
Program Coursebook via web link..... <input type="checkbox"/> \$ 0
Program Coursebook via hardcopy*..... <input type="checkbox"/> \$ 30
CLE will provide by email a link to access the program materials. Should you prefer to purchase the complete textbook, please indicate it above.
* In order to have your textbook available at the program, we must receive your registration 7 working days before the program. If we receive your registration after the 7 days , we will send your coursebook after the program .

Payment Information: Registrations cannot be processed without payment.		
		Total \$ _____
Check Enclosed # _____ MasterCard - VISA - AMEX - Discover		
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- HOW TO REGISTER FOR THE LIVE PROGRAM:**
- Online:**
1. Log into your website account at www.mainebar.org. If you do not know your login credentials, please call the MSBA.
 2. Under **CLE/Education**, click **Register for CLE**.
 3. Locate this program in the Community Calendar and click on the program to register.
- Mail:** Maine State Bar Association | P O Box 788, Augusta, ME 04332-0788
- Phone:** 207-622-7554 | 1-877-622-7554
- Fax:** 207-623-0083

