

## Notes on the Appendix

By Matt Pollack

Clerk of the Law Court

May 2, 2018

As you prepare the appendix for your appeal, you must *carefully* read Rule 8 of the appellate rules and ensure that you comply with **every sentence, phrase, and word** of it. It's not difficult, but it does require careful attention to detail.

This document is a companion to the rule, not a substitute for it. It contains some explanations and reminders that will help you understand and apply the rule. But, again, **read and follow the rule**. (And this guide doesn't cover appendices in child protection cases, which have some slightly different rules.)

All citations to rules are to the *restyled* Maine Rules of Appellate Procedure, unless otherwise indicated.

### Keep in mind the purpose of the appendix

Although the details of the rule are crucial, as you assemble your documents for the appendix—especially the discretionary ones—you should keep in mind the purpose of the appendix: to make the *essential* documents *from the record on appeal* readily available to each justice. *See* Rule 8(c). The appendix is *not* like a collection of exhibits for a summary-judgment proceeding; it should not contain everything that the parties will refer to in their filings. It must contain only the documents that are *essential* to the Court's understanding of the issues on appeal.

The rule provides quite a bit of guidance on what should be in the appendix: only documents from the record, Rule 8(c), that are “essential” to the Court's review and understanding of the *issues* (not necessarily the *facts*)<sup>1</sup> on appeal, Rule 8(c), (f)(1), (2).

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<sup>1</sup> Some lawyers have filed appendices containing exhibits that provide powerful evidence of some fact (or show the general character of an opponent), even though neither the exhibit nor the fact is relevant to the

Remember that the Court always has the entire record available to it, and that any portion of the record is available to any justice who wishes to see it. Therefore, it is not necessary—in fact, it is strongly discouraged—to put in the appendix everything that you refer to in your brief.

### **Work with the other parties on the contents**

The party who files the first notice of appeal is responsible for producing and filing the appendix. Rule 8(a). All parties to an appeal are required to confer and attempt to reach agreement on the contents of the appendix. Rule 8(i). **The first appellant must initiate the discussion with the other parties well in advance of the due date for the appendix.**

*If* the parties cannot agree, then, **at least 14 days before the appendix is due**, the first appellant must send the other parties a list of the documents that the appellant plans to include in the appendix. Rule 8(i)(1). The best way to do this is by sending a draft table of contents (without page numbers). The appellant should not file this proposal with the Court; it should be delivered only to the other parties.

If another party wishes to have other documents included in the appendix, then, **7 days after the notice of the appellant's list**, the party must designate those documents. Rule 8(i)(2). The appellant must then include those documents in the appendix. *Id.*

If another party believes that some of the first appellant's proposed documents are not allowed in the appendix, the party should try to persuade the appellant of that. If the first appellant still plans to include the documents, the other party can make a motion to exclude the documents from the appendix.

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issues on appeal. The inclusion of those kinds of exhibits makes a poor impression on the Court and should be avoided.

## **Include the mandatory documents in the right order**

In Rules 8(d) and (e), the Court enumerates several documents that it considers “essential” to its understanding of the issues in the appeal and that are therefore required to be in the appendix.

Not only is the *inclusion* of the mandatory documents in the appendix non-negotiable, but so is the *order* that those documents appear in the appendix. The justices carefully study hundreds of appeals every year. They must be able to quickly find documents that they need. They have agreed that they need certain documents in a certain order to be able to effectively review an appeal. Don’t make their job harder than it already is. Let them concentrate on the substance of the legal issues and not on finding documents that are important to them—and therefore to you.

Rules 8(h)(1) and 8(l) emphasize how important it is to the Court to have certain documents in a certain order. Rule 8(l) even equates “failure to include in the appendix any document required to be included” with failing to file an appendix *at all*. Both rules say that your appeal could be dismissed for failing to include a mandatory document.

The mandatory documents are discussed in a separate document, also dated May 2, 2018, entitled, “Mandatory Documents in the Appendix.”

## **Leave out prohibited documents**

Both because the appendix must distill the documents down to those that are *essential* for the Court’s understanding of the issues on appeal and because the appendix is (almost always) public, there are several documents that you ***may not*** include in the appendix (Rule 8(g)):

- Documents that are not part of the record on appeal;
- “Pictures, videos, or other images” of
  - Minors
  - Adults subject to a guardianship or mental-health proceeding;
  - Nudity; or
  - Sexual or sexualized acts;

- Unless required by Rule 8(d) or (e), any documents that are confidential by statute or court order; and
- **TRANSCRIPTS** that are not required by Rule 8(d) or (e).

Note especially that *transcripts are prohibited from the appendix* unless they are mandatory documents. This is a change from the pre-restyling rules. Each justice has access to an electronic (pdf) version of each transcript in every appeal, and you can cite the transcripts in your briefs with abandon if you want.

**Make sure that the appendix is assembled, printed, and bound correctly.**

Although it's even easier than determining the contents of the appendix, producing the appendix in its required final form seems to baffle many attorneys. A slow, methodical reading of Rule 8(k) will take all the mystery out of this for you:

1. After you have assembled the documents in the right order, number all of the pages consecutively from the beginning to the end of the appendix. Do not rely on the native page numbers of each document. Please make sure that your appendix page numbers are clearly distinguishable from the native page numbers. Rule 8(k)(1).

2. Reproduce the appendix with black images/copies on white paper, except for exhibits that were originally in color, which should be in color and look as much like the original as possible. Rule 8(f)(1), (k)(2).

3. (a) If the appendix consists of 20 pages or fewer, you can bind it with your appellant's brief. Rule 8(k)(1). It should go at the end, still labeled as "Appendix." It's helpful to have the table of contents both at the beginning of the entire brief (after the table of contents for the brief itself) and at the beginning of the appendix. The printing for the appendix should be on **both sides of the paper**, but the contents of the brief itself should be printed on only one side of the paper. Rule 7A(g)(2).

(b) If the appendix is 21 pages or more, it must be a separate document (Rule 8(k)(1)) that

- (1) has a **white** cover, Rule 8(k)(1);
- (2) has the following elements on the cover:
  - (A) The designation “Appendix”;
  - (B) The **Law Court** docket number;
  - (C) The case title (which remains the same from the trial court in almost all instances, but use the one on your briefing schedule if you’re not sure); and
  - (D) The names, bar numbers, and addresses of *all counsel participating in the appeal* (not just the one preparing and filing the appendix), Rule 8(k)(1);
- (3) is printed on **both sides of the paper**, Rule 8(k)(2);
- (4) is bound on the left side with **spiral or comb** binding so that it lays flat when open, Rule 8(k)(3);
- (5) contains 150 sheets of paper (300 printed pages) or less, Rule 8(k)(5); and
- (6) consists of only one volume that can be handled as one piece even if it has oversize exhibits (like maps or plans) or electronic exhibits included (which it may), Rule 8(k)(4)-(5).

## **The Supplement of Legal Authorities**

There is a document that you may file called the “Supplement of Legal Authorities” that is authorized by Rule 8(n). Although it’s in the appendix rule, it’s actually a separate document.

The supplement of legal authorities is not required.

If, however, you have cited to some obscure legal authority, you may want to help the Court by providing a copy of that authority in a “Supplement

of Legal Authorities.” Like with the appendix, anything that any party wants to include in the supplement of legal authorities must be included.

The supplement is intended to provide the Court with ready access to any hard-to-find legal materials. You certainly do not need to include statutes, regulations, or cases of any United States jurisdiction in the supplement of legal authorities. And any major treatises, law review articles, ALRs, etc., can stay out.

What you *should* put in are any hard-to-find orders of trial courts, local government regulations, administrative agency decisions that are not published, and portions of books that are not easily available.

A good rule of thumb is that you should put in anything that is not available in Westlaw or Lexis (the Court has access to both), and that you should *not* put in anything that *is* available in Westlaw or Lexis.

# MAINE SUPREME JUDICIAL COURT APPENDIX GENERAL CHECKLIST

May 2, 2018

This checklist is only that: a checklist. It is *not* a set of instructions.  
Read and follow Rule 8 of the Maine Rules of Appellate Procedure.

**Discuss contents with, and get agreement from, the other parties**

**Before you make copies of the appendix, make sure that all of this is true:**

- It contains only documents that are part of the trial court file/record (Rule 8(g)(1))
- It does NOT contain any document more than once (Rule 8(c))
- It does NOT contain any pictures, images, or videos of any of these: (Rule 8(g)(2))
  - anyone under 18 years old;
  - anyone under a guardianship;
  - anyone who is the subject of a mental health commitment case; or
  - any nudity, sexual acts, or sexualized acts
- It does NOT contain any document that is confidential (**except** as required) (Rule 8(g)(3))
- It does NOT contain any part of any transcript that is not required (Rule 8(g)(4))
- It has a **cover with the following information on it:** (Rule 8(k)(1))
  - the Law Court docket number
  - the case title
  - the word "APPENDIX"
  - the names and addresses of *all* attorneys and unrepresented parties
- It **starts** (after the cover) with a table of contents with page numbers (Rule 8(d)(1))
- Immediately after the table of contents**, it contains all of the required documents **in the required order** (Rule 8(d), (e)) **See the "APPENDIX REQUIRED DOCUMENTS CHECKLIST" for a list.**
- The pages in it are numbered consecutively throughout the appendix (Rule 8(k)(1))
- It does not exceed 300 numbered pages (150 sheets of paper printed on both sides) (Rule 8(k)(5))
- Any exhibits in color are reproduced in color to look as much like the original as possible (Rule 8(f)(1))
- Any oversize or electronic exhibits that are included in it are firmly attached (Rule 8(k)(4))

**Then have it printed/copied and bound so that all of this is true:**

- It has a white cover (preferably cardstock, no plastic) (Rule 8(k)(1))
- It is printed in black ink on white paper (except for exhibits that are in color) (Rule 8(k)(2), 8(f)(1))
- It is printed on both sides of the paper (Rule 8(k)(2))
- It is printed on 8½-by-11 inch paper (except for oversize or electronic exhibits) (Rule 8(k)(2))
- It is bound with comb or spiral binding so that it lies flat when open (Rule 8(k)(3))

**Then file 8 copies of it and serve one copy on each other party (Rule 8(b))**

**Please email a scanned (pdf) copy of the appendix to [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov)**

## Mandatory Documents in the Appendix

By Matt Pollack  
Clerk of the Law Court  
May 2, 2018

As you assemble the mandatory documents for the appendix for your appeal, you must *carefully* read and comply with **every sentence, phrase, and word of Rule 8(d)-(e)** of the appellate rules. It's not complicated, but it does require careful attention to detail.

This document will present the current version of Rule 8(d)-(e) in boxes (but *check for amendments to the rule before you rely on this document*), with explanations and cautions for each provision of the rule below the provision.

At the end of this document is some information on what to do if you are unsure of whether a particular document is mandatory.

All citations to "Rules" in this document are to the *restyled* Maine Rules of Appellate Procedure, unless otherwise indicated.

**(d) Contents, Mandatory - ALL APPEALS.** The following documents shall be contained in the appendix in the following order:

Subdivision (d) of the rule applies to every appeal. The mandatory documents listed in subdivision (d) must come first in the appendix. And they must be in **the precise order listed in subdivision (d)**.

**(1)** A table of contents.

This may seem straightforward, but there are a few details that you should keep in mind to make the Court's job easier.

First, remember that you must not only list the documents that are in the appendix but you must indicate in the table of contents what page each document starts on.



Second, be descriptive of the documents. “Order (12/15/17)” and “Exhibit A” are not helpful. “Order granting motion in limine regarding interpretation of ‘statement’ by dog, dated 12/15/17” and “State’s Exhibit A—Photograph of scene of crime” are much better; the descriptions will make it easier for the justices to find what they are looking for. The descriptions also do not have to be the exact title of documents (especially long-winded motion titles), unless the exact title is important.

A “description” of the trial court docket sheet is not really necessary unless there is more than one, in which case a description of each would help. Don’t be afraid to provide a short plain-English description of the case. For example, you might do this:

**Docket sheets from trial court proceedings:**

Kennebec County Superior Court docket number CV-2016-23, <i>John Doe v. Super Markets, Inc.</i> (Claim of unsafe floor in produce aisle) .....	1
Kennebec County Superior Court docket number CV-2017-12, <i>John Doe v. Super Markets, Inc.</i> (Claim of insufficient lighting in parking lot) .....	10

Third, for the mandatory documents, it’s helpful to have an indication of the reason that each document is mandatory, mirroring, or at least approximating, the language of the rule. For example, the phrase “Docket sheets from trial court proceedings” in the example above lets the Court know what kinds of documents are listed. See the sample table of contents at the end of this document for more examples.

**(2)** All docket entries from the proceeding(s) below.

The “docket entries” are the docket sheets. Get these from the *trial court* clerk. Try to get them shortly before you prepare the appendix, and not immediately after you file the notice of appeal, just in case something happens in the trial court after the notice of appeal that will be relevant to the appeal.

**(3)** Each trial court decision, ruling, or judgment that will be addressed in the appeal, including the original final judgment and any subsequent orders amending the original final judgment.

This is perhaps the most important part of the appendix. After all, the Court needs to carefully study whatever it is reviewing in order to review it/them. **Each decision, ruling, or judgment that you are challenging must be here, and the final judgment, whether or not you are directly challenging it, must also be here.**

The “decisions, rulings, or judgments” that must be included are the following:

- The original final judgment—the one that originally finally disposed of the case in the trial court, and not necessarily the order appealed from. For example, if the appeal is from a post-judgment motion to modify parental rights, the “original” final judgment is the parental rights or divorce judgment. If the appeal is from a probation revocation, the original final judgment is the judgment & conviction.
- Any amendments or modifications to that final judgment, whether orders describing the amendment or entire amended judgments.
- Any other ruling, order, or decision that you are challenging, whether it is made from the bench or in writing. For example, if you are challenging the admission of certain evidence, the ruling on any objection or motion in limine must be here.

**Put the order(s), judgment(s), or ruling(s) that you are appealing from first** in this section. Then include any other orders, such as an original final judgment that is no longer subject to challenge, after that.

**(A)** If the decision is in written form, a copy of the decision shall be included;

For *each* decision, ruling, or judgment that you are challenging, any written version of the decision (or part of the decision) must be included.

**(B)** If the decision or judgment includes more than one order or set of findings, a copy of each court action that constitutes the decision or judgment shall be included;

For *each* decision, ruling, or judgment that you are challenging, you must include all parts of the decision. For example, there may be a separate set of findings of fact made before, with, or after the ruling, either because a motion for findings was made or the court just issued the findings separately. Or there may be a preliminary ruling, a request for further briefing on a particular point, and then a final ruling. Both the preliminary and final rulings must be included.

**(C)** If any part of the decision was stated orally on the record, a copy of the transcript of the decision shall be included. When a decision or ruling stated orally on the record was preceded by a colloquy with the court, the colloquy shall be included in the appendix if the colloquy does not exceed 20 pages in the appendix.

This paragraph tells you what to include if the decision that you are challenging (or any part of it) was stated on the record orally. This does not refer to a decision that was presented on the record but later reduced to writing, such as where the court asks counsel for one side to draft an order based on findings, conclusions, and a disposition announced in court. If a decision is reduced to writing, then it was not “stated orally on the record” for purposes of this rule.

You must include the appropriate transcript pages. Parsing this one out results in two distinct things that must be included (one only if a condition is met):

- The transcript pages with the court's decision/ruling. These must be included no matter how long this portion of the transcript is.
- The transcript pages with the colloquy between the court and counsel, *if the colloquy is 20 pages or fewer in the appendix.* (that is, up to 80 pages of the condensed version of the transcript.)
  - For an evidentiary ruling, include the question, objection, any proffer, and any discussion between counsel and the court.
  - For a motion, include the discussions on the motion. (The motion itself would come later, under subdivision (5).)

Don't misread this rule: the *discussion* about a ruling is necessary only if part or all of the *ruling* is stated orally on the record. If the court has fully reduced its ruling to writing, then you do *not* include the discussion on that ruling in the appendix.

**(4)** The complaint, indictment, information, petition, motion, or post-judgment motion that initiated the proceeding in the trial court and any subsequent amendment to the document that initiated the proceeding.

With some notable exceptions explained below, the document that “initiated the proceeding in the trial court” is the document that was filed first in the entire trial court proceeding: the complaint (civil or criminal); the petition; or the indictment or information in a criminal case that didn't start with a complaint.

There are some cases in which the “motion or post-judgment motion that initiated the proceeding” means a document filed after the “final” judgment that disposed of the case and not the document that started

the entire trial court case. This is usually a motion that is filed quite some time after the judgment, such as these:

- A motion to modify parental rights and responsibilities, child support, or spousal support pursuant to M.R. Civ. P. 120;
- A motion for relief from judgment or to correct a clerical error pursuant to M.R. Civ. P. 60;
- A motion to revoke probation or modify conditions of probation; or
- A motion for contempt of, or to enforce, an earlier judgment.

In addition to the document that initiated the proceedings, you must file any amendments to that document. If, for example, the latest effective complaint is a "Third Amended Complaint," then you must include the original complaint, the First Amended Complaint, the Second Amended Complaint, and the Third Amended Complaint.

**Do not include any answers or responses in this section.** Answers to complaints and responses to motions may properly be discretionary documents (but they are not usually essential to the understanding of the issues on appeal, so be careful), but they do not belong among the mandatory documents.

**(5)** Any pre-judgment or post-judgment motion or petition that was subject to an order or other action or inaction by the trial court that is at issue in the appeal. If the motion or other request to the trial court was made orally, a transcript of the on-the-record discussion of the motion or other request to the trial court, including the court's ruling, shall be included.

This subdivision refers to any motions, petitions, or requests that are not initiating documents pursuant to subdivision (d)(3) but that resulted in a ruling that you are challenging in the appeal. For example, this could be a motion in limine, a motion for judgment as a matter of law, a motion to continue, a motion to change venue, or any of many other types of motions and requests that may be at issue in the appeal.

Be careful with the differences between the transcript pages required by this paragraph and those required by paragraph (3)(C). Paragraph (3)(C) requires you to provide transcript pages where the court's *ruling* was made orally on the record. This paragraph requires you to provide transcript pages where the *motion or request* was made orally on the record. Note also that there is no page limit to the transcript pages here like there is in paragraph (3)(C).

Also note that transcript pages of an oral argument on a *written motion* are not required in (and are, therefore, prohibited from, *see* Rule 8(g)(4)) the appendix. The discussion of a motion is a required document only where the motion or request itself was made orally.

Also be careful not to duplicate documents here. Although oral orders on oral motions are required here, they are likely to have already been included under paragraph (3)(C). If they have been included already, do not include them again. *See* Rule 8(c). Discussions on the motion may be included under paragraph (3)(C), and not here, if they are 20 pages long or shorter. Again, don't include those pages again here if they were included under paragraph (3)(C).

**(e) Contents, Mandatory - SPECIFIC PROCEEDINGS.** Following the contents required by subdivision (d), the appendix shall contain the following contents for specific proceedings:

After the documents that are mandatory for all appeals under Rule 8(d), you must include certain documents for certain appeals. Rule 8(e) does not specify that the documents required under the subdivision be in any particular order, but it's a good idea to put them in the order they are listed in the rule so that you can ensure that you have included everything necessary.

**(1) Summary Judgment.** If the appeal relates to the entry or denial of a summary judgment, a copy of the parties' statements filed pursuant to M.R. Civ. P. 56(h).

This subdivision applies only where the appeal is from a summary judgment order. It calls for the statements of material facts filed with a motion for summary judgment. But *only* the statements of material facts. Not the motion. Not the memo in support of the motion. And not the exhibits, affidavits, and transcript pages that support the statements of material facts.

If the statements are “snowballed,” with the movant creating the first statement and the parties then adding to the first statement with responses, objections, and additional facts, then you need include only the final version that includes all of the parties' statements.

**(2) State and Local Government Administrative Appeals**

This subdivision applies to appeals from Superior Court, or directly from an administrative agency (the PUC or DEP), that addresses a decision of a state, county, or municipal administrative agency. Examples of “administrative agencies” are given in paragraph (A) of this subdivision (see below).

**(A)** If the appeal addresses a decision of a State or local administrative agency, including a municipality, board, commission, or other administrative body, a copy of the agency's decision, whether written or transcribed.

This one is straightforward: if you are challenging a decision of an administrative agency or municipality, include a copy of the agency's or municipality's decision. If there are multiple levels of an administrative agency's decision, such as by a hearing officer first and then by a board or commission, **the order included should be the one that the Law Court reviews for error.** In

other words, research to determine specifically which order is the operative order for Law Court review and include that one.

**(B)** If the agency decision was based on a municipal ordinance, a State or local regulation, or a Private and Special Law, a copy of the relevant section or sections from that ordinance, regulation, or Private and Special law, shall be included. For appeals from decisions of a municipal agency, a copy of the section or sections of the municipal ordinance that establish the authority of the agency to act on the matter subject to the appeal shall be included. Copies of relevant sections of the Maine Revised Statutes shall not be included.

There are two parts to this paragraph:

- You must include the relevant section or sections from any ordinance, regulation, or Private and Special Law upon which the agency's decision was based.
- If the decision is from a municipality, you must include the section or sections of the municipal ordinance that establish the authority of the agency to act. In other words, you must include the ordinances that set out the procedures within the municipality for review of the charge, claim, or application at issue.

The rule also emphasizes that you may *not* include any state statutes. Therefore, any statutes that provide for the authority of the agency or municipality to act should not be reproduced in the appendix.



**(3) Jury Instructions.** If the appeal includes a challenge to a jury instruction or jury instructions, a copy of the transcript of the jury instructions and a copy of any written instructions given to the jury, a copy of the transcript containing the discussion of or objection to the instructions, and copies of any relevant oral or written requests to the trial judge for different instructions than those given to the jury by the trial judge.

*If at least one of your issues on appeal revolves around a jury instruction*, then you must include all of the following:

- The transcript pages containing *all* of the jury instructions (not just the one you’re challenging);
- Any written instructions given to the jury—again, *all* of them;
- The transcript pages containing the discussion of or objection to the instructions—again, all discussions/objections about all instructions;
- Any written request, and the transcript pages containing any oral request, to the trial judge for *any* instructions that ended up not being given to the jury.

Keep in mind that even if you are challenging only one jury instruction, you must include these documents relating to the entire set of jury instructions. This is because the Law Court reviews jury instructions as a whole; individual instructions are not reviewed in isolation. *State v. Haji-Hassan*, 2018 ME 42, ¶ 26, --- A.3d ---.

**(4) Jury Verdict, Special Verdict Form.** If the appeal is from a judgment entered on the verdict of a jury, and the jury reported its verdict on a written form, a copy of that form and a transcript or copy of the objections to that form, if any.

This one is simple: if there’s a jury verdict form and you are appealing from a judgment entered after the jury’s verdict, then include all of the following:

- The (completed and signed) form itself; and
- The written objection or transcript pages of any objections to the form.

**(5) Contract, Deed, Lease, Trust, Will, or Insurance Policy.** If the appeal relates to the interpretation or enforcement of a contract, deed, lease, trust, will, or insurance policy: a copy of that document.

This provision applies where your appeal relates to the *interpretation of* any of the following documents:

- A contract;
- A deed;
- A lease;
- A trust;
- A will; or
- An insurance policy.

The provision does not necessarily apply just because the claim arises from, or involves, one of those documents. The provision applies only where the *interpretation* of the document, or any portion of the document, is in question.

If the appeal does involve the interpretation of a portion of the document, you must include a copy of the *entire* document.

**(6) Domestic Relations, Parentage, or Child Protection Matters.**

If the appeal is from a decision related to a domestic relations, parentage, or child protection matter: the child support affidavits, if child support is at issue on appeal; a transcript or recording of the testimony concerning the issues on appeal; the financial statements of the parties, if property distribution or child or spousal support is at issue on appeal; the report of the guardian ad litem, if any, if a parental rights or parentage decision is at issue on appeal.

This subdivision applies if the appeal is from a “decision related to” certain subjects, namely “domestic relations, parentage, or child protection.” “Domestic relations” is not defined in the rule, but means any matter in which a marriage (or former marriage) or children are at issue. This would include any action under Title 19-A, child protection proceedings under Title 22, and proceedings involving the protection of children under the Probate Code (Title 18-A):

- judicial separation;
- divorce;
- parentage;
- parental rights and responsibilities;
- grandparents’ visitation rights;
- child support;
- guardianship or conservatorship of a minor;
- adoption of a minor; and
- protection from abuse (not protection from harassment).

If the case is any one of those types, then the rest of the paragraph applies. For all but one item in the list of documents, however, there is a condition that must be satisfied before the document is required:

- The child support affidavits must be included *if child support is at issue on appeal.*
- The financial statements of the parties must be included *if property distribution, child support, or spousal support is at issue on appeal.*

- Any guardian ad litem reports must be included *if parentage or parental rights are at issue on appeal*.

Note that if child support is at issue, then both the child support affidavits and the regular divorce financial affidavits (if they were filed) must be included here.

In addition to these conditional requirements, the rule requires that you include “a transcript or recording of the testimony concerning the issues on appeal.” The “recording” applies only if a recording was granted at state expense in lieu of a transcript; this rule does not authorize that a recording be used in lieu of a transcript in every case.

Although the requirement for a transcript of testimony on “the issues on appeal” could conceivably mean the transcript (or recording) of the entire hearing, you should try to limit the transcript pages to those that have to do with the specific dispute(s) at issue. For example, if you are challenging a parental rights and responsibilities order, do not include the transcript of the entire hearing if the real issue on appeal is a specific circumstance, such as whether one parent has resolved a substance abuse issue.

**(7) Criminal Appeals.** If the appeal is from a decision in a criminal matter: the presentence report, if any, if a sentence is at issue on appeal; the search warrant or arrest warrant and any affidavit in support of issuance of the warrant, if a search warrant or arrest warrant or actions pursuant to a search warrant or arrest warrant are at issue on appeal; and the Attorney General’s authorization, if required, for any State appeal brought pursuant to Rule 21.

If your appeal is from any criminal matter (that is, anything docketed in the trial court with a CR docket number), there are certain documents that must be included *if certain conditions are met*:

- Any presentence report must be included *if a sentence is at issue on appeal* (whether as part of a sentence review that has been permitted by the Sentence Review Panel or in the limited

circumstances where a sentence is available on a direct appeal from the conviction);

- Any search warrant or arrest warrant must be included *if the warrant or any actions taken pursuant to it are at issue on appeal*;
- The affidavit in support of any search warrant or arrest warrant must be included *if the warrant or any actions taken pursuant to it are at issue on appeal*;
- The approval of the Attorney General for the appeal must be included *if the appeal is by the State and the AG's approval was required*.

**If you're unsure whether a document is mandatory, don't guess.**

If, after carefully reading the rule and this guide, you are still unsure whether a particular document is mandatory under the rule, don't just guess. It is improper to include a non-mandatory document among the mandatory ones given the rule that the mandatory documents come first.

If you are unsure, you can call the clerk's office or make a motion to determine the contents of the appendix. Any answer from the clerk's office is not a final determination, of course, but it will prevent your appeal from being dismissed if you rely in good faith on information from the clerk's office. If you want a final determination of whether a particular document belongs in the appendix, file a motion to determine the contents of the appendix.

**MAINE SUPREME JUDICIAL COURT**  
**APPENDIX REQUIRED DOCUMENTS CHECKLIST**

May 2, 2018

This checklist is only that: a checklist. It is *not* a set of instructions.  
*Read and follow Rule 8 of the Maine Rules of Appellate Procedure.*

**The table of contents comes first**

**Then these documents must follow the table of contents in this order:**

<ul style="list-style-type: none"><li><input type="checkbox"/> The trial court docket sheet (Rule 8(d)(2))</li><li><input type="checkbox"/> Each trial court ruling addressed in the appeal, including these: (Rule 8(d)(3))<ul style="list-style-type: none"><li><input type="checkbox"/> the original final judgment</li><li><input type="checkbox"/> any orders amending the original final judgment</li><li><input type="checkbox"/> any other ruling addressed in the appeal</li></ul></li></ul> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"><p><b>For each trial court ruling that is included, you must include these:</b></p><ul style="list-style-type: none"><li><input type="checkbox"/> all written parts of the ruling (Rule 8(d)(3)(A), (B))</li><li><input type="checkbox"/> any transcript pages with a part of the ruling stated on the record (Rule 8(d)(3)(C))</li><li><input type="checkbox"/> any transcript pages with a short discussion about the ruling (Rule 8(d)(3)(C))</li></ul></div> <ul style="list-style-type: none"><li><input type="checkbox"/> The initiating document (Rule 8(d)(4))</li><li><input type="checkbox"/> Any amendments to the initiating document (Rule 8(d)(4))</li><li><input type="checkbox"/> Any pre-judgment or post-judgment motion at issue (including any transcript pages) (Rule 8(d)(5))</li></ul>
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**Then these documents must come next in these particular cases:**

<ul style="list-style-type: none"><li><input type="checkbox"/> <b>Summary judgment motion:</b> the statements of material facts (Rule 8(e)(1))</li><li><input type="checkbox"/> <b>State or local agency decision:</b> (Rule 8(e)(2))<ul style="list-style-type: none"><li><input type="checkbox"/> the agency's decision, either written or transcribed (Rule 8(e)(2)(A))</li><li><input type="checkbox"/> any relevant local or state ordinance, regulation, or chapter law (Rule 8(e)(2)(B))</li><li><input type="checkbox"/> if municipal agency, the ordinances that establish the agency's authority (Rule 8(e)(2)(B))</li></ul></li><li><input type="checkbox"/> <b>Jury instruction challenged:</b> (Rule 8(e)(3))<ul style="list-style-type: none"><li><input type="checkbox"/> the transcript pages containing all instructions, discussion, and objections</li><li><input type="checkbox"/> requests (written or transcript pages) for instructions different from the ones given</li></ul></li><li><input type="checkbox"/> <b>Verdict form used:</b> (Rule 8(e)(4))<ul style="list-style-type: none"><li><input type="checkbox"/> a copy of the verdict form and</li><li><input type="checkbox"/> objections (written or transcript pages) to the form</li></ul></li><li><input type="checkbox"/> <b>Contract, deed, lease, trust, will, or insurance policy at issue:</b> (Rule 8(e)(5))</li><li><input type="checkbox"/> <b>Domestic relations, parentage, or child protection case:</b> (Rule 8(e)(6))<ul style="list-style-type: none"><li><input type="checkbox"/> Child support affidavits if child support is at issue</li><li><input type="checkbox"/> Transcript or recording of the testimony concerning the issues on appeal</li><li><input type="checkbox"/> Financial statements of the parties, if financial matter at issue</li><li><input type="checkbox"/> Report of guardian ad litem if parentage or parental rights at issue</li></ul></li><li><input type="checkbox"/> <b>Criminal case:</b> (Rule 8(e)(7))<ul style="list-style-type: none"><li><input type="checkbox"/> Any presentence report if sentence is at issue</li><li><input type="checkbox"/> Any search or arrest warrant at issue and supporting affidavits</li><li><input type="checkbox"/> Attorney General's authorization for appeal by State where required</li></ul></li></ul>
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SAMPLE TABLE OF CONTENTS FOR AN APPENDIX

---

	Page
<b>Docket sheets from trial court proceedings:</b>	
Kennebec County Superior Court docket number CV-2014-23, <i>John Doe v. Super Markets, Inc.</i> (Claim of unsafe floor in produce aisle) .....	1
Kennebec County Superior Court docket number CV-2015-12, <i>John Doe v. Super Markets, Inc.</i> (Claim of insufficient lighting in parking lot) .....	10
<b>Trial court rulings addressed on appeal:</b>	
Judgment and Order dated 2/2/18 (entering final judgment for Super Markets, Inc.) .....	15
Additional findings of fact on 2/2/18 judgment, dated 3/15/18 .....	19
Order granting partial summary judgment to Super Markets, Inc., on claim for insufficient lighting in parking lot, dated 6/12/17 .....	24
Order granting motion in limine to exclude testimony of Doe's lighting engineer, dated 3/5/16 .....	35
Order denying motion to change venue dated 1/12/16.....	37
<b>Initiating documents and amendments:</b>	
Complaint in Kennebec County Superior Court docket number CV-2014-23, <i>John Doe v. Super Markets, Inc.</i> , dated 4/1/14 (Claim of unsafe floor in produce aisle) .....	39
Complaint in Kennebec County Superior Court docket number CV-2015-12, <i>John Doe v. Super Markets, Inc.</i> , dated 4/1/15 (Claim of insufficient lighting in parking lot).....	59

First Amended Complaint in CV-2015-12 (parking lot), adding claim of failure to adequately maintain premises .....	74
--	----

**Motions subject to orders at issue on appeal**

Motion for additional findings of fact regarding 2/2/18 judgment, dated 2/14/18.....	97
--	----

Motion for summary judgment by Super Markets on claim for negligent design of parking-lot lighting, dated 3/10/17 .....	103
---	-----

Motion in limine of Super Markets to exclude testimony of Doe's lighting designer, dated 2/10/16.....	118
---	-----

Motion to change venue dated 1/12/15.....	125
---	-----

**Statements of Material Facts on ACME's motion for summary judgment:**

Super Market's statement of material facts, with Doe's responses and statement of additional facts, dated 3/31/17.....	138
--	-----

<b>Jury verdict form</b> .....	155
--------------------------------	-----

**Discretionary exhibit:**

Doe's Exhibit 10: Report of Roberta Bright, PE, on design and installation of Super Market's parking lot lighting.....	160
--	-----