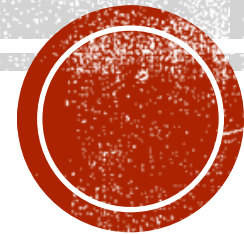


CAFL APPEALS SOUP-TO-NUTS

Roberta M. Driscoll, ESQ. - CAFL MENTOR

2019 CAFL Appellate Certification Training



FOR YOUR INFORMATION- TERMS OF ART

- “The record”: All of the papers in the court file (exhibits, motions, pleadings, transcripts, findings of fact) (see Mass. R. App. P. 8)
- “Assembling the record”: clerk of the juvenile court notifying the Appeals Court that the matter is ready to be sent to the Appeals Court.
 - The Juvenile Court does not actually send any documents to the Appeals Court. The Appeals Court will only see the documents filed by the parties.
- “Record Appendix”: collection of documents from trial that the appellant chooses to provide to the Appeals Court with their brief.
- “E-file” refers to the electronic submission of materials to the Appeals Court and the SJC through eFileMA



GETTING READY- BEFORE ACCEPTING YOUR FIRST APPEAL:

- Sign up for an eFile account
- E-filing will soon be mandatory in the Appeals Court & is mandated by CPCS
 - SJC: electronic and paper
- Be sure that all of your CPCS paperwork is finalized (especially important if you are not on other panels)
 - W-9
 - Direct deposit form
- Set up a time to talk to your mentor
 - If you are new to appeals, we can help with practical advice about software and technology, legal research options, short-cuts, etc.



GETTING READY-

BE AWARE OF YOUR OBLIGATIONS:

- CAFL Appellate Performance Standards can be found in the CPCS Assigned Counsel Manual pp. 4.223-4.233



GETTING READY-

BE AWARE OF YOUR OBLIGATIONS:

- Diligence, Zeal and Loyalty.
- Mentor Program Requirements.
- You must comply with all CAFL performance standards



GETTING STARTED- PRACTICAL MATTERS

- For each appeal you will receive a listing letter via email from Rita Caso
 - Identifies trial and appellate counsel
 - Provides trial court docket number
 - Identifies the trial court
- Notify your mentor of all new assignments in a timely fashion
 - This is your obligation as mentee
 - Most mentors have active practices themselves



GETTING STARTED-

“IMMEDIATE” FIRST STEPS

- File your Notice of Appearance and serve all counsel*
- Gather information from trial counsel (more on this later.....)
- Inform your mentor of your new assignment
 - Arrange a time to review case with your mentor.
 - Send mentor copies of all documents (exhibits, findings, transcripts, etc)
 - Keep in touch with your mentor and advise them of any status change



GETTING STARTED-

WORKING WITH TRIAL COUNSEL

- CPCS Performance Standards require that trial counsel continue to represent the client until the appeal is concluded (even if they think otherwise) (Manual p. 4.221)
- Meet with trial counsel if possible to get their perspective on the case- see “Questions for Trial Counsel”
- Obtain a copy of trial counsel’s file (not just exhibits). Trial counsel **shall** “cooperate” with appellate counsel and will provide copies of exhibits, pleadings, case notes, etc. upon request. (Manual p. 4.222)
- You may need to be persistent, insistent or... more insistent. Involve Andy/Ann if there are issues/ difficulties obtaining assistance from trial counsel



FOR YOUR INFORMATION- QUESTIONS FOR TRIAL COUNSEL



GETTING STARTED- MEETING YOUR CLIENT

- Meet with client to introduce yourself and explain your role as appellate counsel (Manual p. 4.226)
- Be prepared to ask questions – see “Questions for Client”
- Get client to sign Affidavit of Indigency (you’ll need this later to docket the appeal)
- Child clients
 - Appellate counsel must make an independent determination of a child’s position- the circumstances may change over time
 - Establish your own relationship with your client



FOR YOUR INFORMATION- QUESTIONS FOR THE ADULT CLIENT

- What was this case about?
- Did your trial attorney listen to you? Meet with you? Return your phone calls?
- Did you testify at trial? Did your trial attorney prepare you for trial?
- Did any witnesses testify on your behalf? If not, why not?
- Did your attorney talk to you about potential kinship placements?
- settling the case?



GETTING STARTED- MEETING YOUR CHILD CLIENT



GETTING STARTED-

THE POSSIBILITY OF SETTLEMENT

- Move to stay appeal-preferably before briefing
- File affidavit detailing steps taken and anticipated, general timeline
- Expect to provide status updates to Appeals Court every 30 days or so
- Single Justice will vacate stay and order case to briefing if progress deemed insufficient



THE THICK OF THINGS- REVIEWING THE RECORD

- Use your time wisely.
- DO NOT WAIT UNTIL YOU GET THE TRANSCRIPTS, OR (WORSE) THE NOTICE OF ASSEMBLY to begin your review of the record.
- Talk to other people to get ideas about how to go through it all.



THE THICK OF THINGS- WORKING WITH YOUR COLLEAGUES

- Be collegial and accommodating (within reason)
- Email transcripts to counsel promptly
- If you are the appellant, notify appellees of proposed contents of record appendix,
 - be flexible
 - compile exhibits volume early
 - provide courtesy copies as soon as practicable
- Multiple appellants should collaborate to provide joint volumes, even if not on same team regarding arguments
- Be reasonable about assenting to requests and motions filed by the other side



AND NOW THE REAL FUN BEGINS- DOCKETING YOUR APPEAL



- Notice Record is Assembled
- Motion to Waive Filing Fee w/ Affidavit of Indigency
- Docketing the Appeal (14 days)
- Civil Docketing Statement



EVEN MORE REAL FUN- WRITING THE BRIEF

- Create an outline. Seriously.
- Think about:
 - The order of your argument- is your best argument first?
 - Does it help your brief to add an introduction (in virtually every case it will help)
 - Use your argument headers to, well, argue.....
- Stick to the schedule you establish with your mentor for submitting drafts. Keep in mind that we need to review the brief before it is filed, and we will probably suggest some changes.
- If you are stuck in a black hole, call your mentor. We've all been there, and maybe we can help.



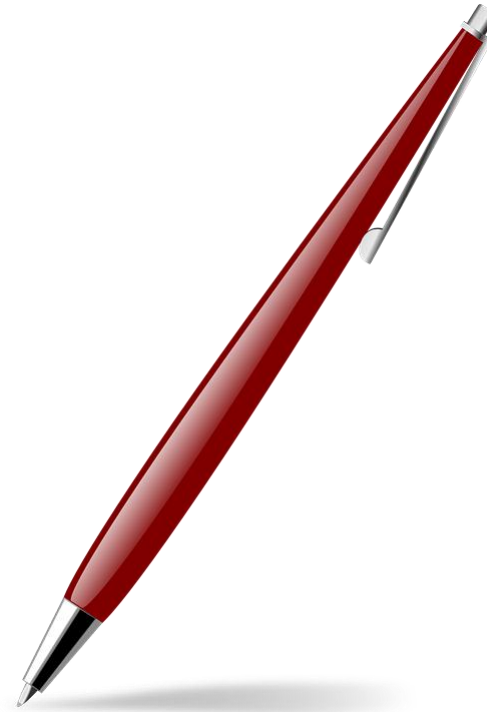
NO FUN AT ALL- EDITING THE BRIEF

- “When your [brief] is ready for rewrite, cut it to the bone. Get rid of every ounce of excess fat. This is going to hurt; revising a [brief] down to the bare essentials is always a little like murdering children, but it must be done.” **Stephen King**
- “Kill your darlings, kill your darlings, even when it breaks your egocentric little scribbler's heart, kill your darlings.” **Stephen King, *On Writing: A Memoir of the Craft***
- “So the writer who breeds more words than he needs, is making a chore for the reader who reads.” **Dr. Seuss**
- “Writing without revising is the literary equivalent of waltzing gaily out of the house in your underwear.” **Patricia Fuller**
- “Editing is hard work, but someone has to do it.” **Roberta M. Driscoll**



BUT SERIOUSLY, FOLKS- EDITING THE BRIEF

- Read the brief out loud
- Make sure the formatting looks polished
- Eliminate unnecessary words
- Avoid typos
- Put the brief down and come back to it



FILING THE BRIEF

- Read the court rules and E-File your brief accordingly
- Check out the brief checklist on the CAFL Appellate Resources Website before filing
- Send a copy to your client (you likely will want to discuss the brief you are filing and show them a copy of a draft before it is filed)
- Send a copy of the final brief to CPCS: Rita Caso



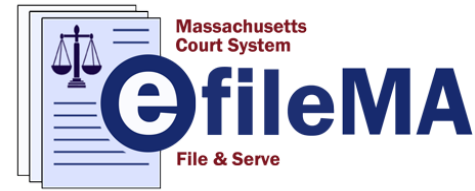
FOR YOUR INFORMATION- HELPFUL RESOURCES

- <https://www.floridabar.org/the-florida-bar-journal/the-joy-of-editing-better-appellate-briefs/>



E-FILING AT THE APPEALS COURT

- www.efilema.com
- Get started by registering and setting up a waiver account.



File Now!

File Court Documents Anytime, Anywhere with eFileMA

eFileMA allows filers to easily open court cases and e-file documents to participating courts anytime and from anywhere — 24 hours a day, seven days a week, 365 days a year. E-filing court documents significantly streamlines the case filing process and provides benefits to both the filer and the court.

Get Started!

A number of Massachusetts courts are accepting e-filed records. [View the active courts list »](#)

What is eFileMA?

eFileMA delivers electronic filing via a secure web portal for attorneys and government agencies.

You don't need any unique software, middleware or hardware — all you need is Internet access and a browser.

How eFileMA Works

→ Submit court documents online to any participating court in Massachusetts

→ eFileMA automatically calculates your filing fees and delivers documents to the court



GUIDE

Electronic Filing at the Appeals Court

All documents filed with the Appeals Court should be e-filed, whenever possible, and are required to be e-filed in many instances. The Clerk's Office will post updates here that relate to electronic filing, so please check back periodically as this material will be updated from time to time.

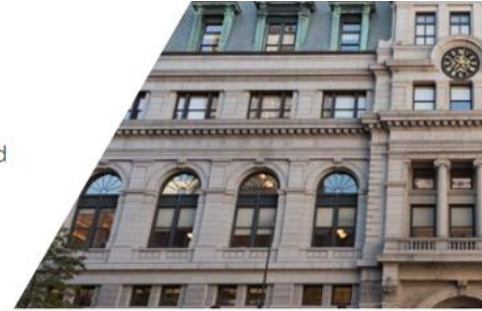


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- ✓ Payment and Waiver of eFileMA.com Fees
- ✓ How to Enter a Civil Appeal and Pay the \$300 Docketing Fee Through eFileMA.com
- ✓ How to Enter a New Single Justice Case and Pay the Filing Fee Through eFileMA.com
- ✓ How to E-File a Motion to Waive the Entry Fee Supported by an Affidavit of Indigency
- ✓ How to File Documents Into Existing Civil and Criminal Cases Through eFileMA.com

Show More ▾

<https://www.mass.gov/guides/electronic-filing-at-the-appeals-court#rules-and-standing-order-governing-electronic-filing>



E-FILED BRIEFS, ADDENDA, AND APPENDICES



Must comply with formatting requirements in:

- Mass. R. App. P. 16, 18, and 20(a)
- S.J.C. Rule 1:25 – Massachusetts Rules of Electronic Filing



PDF REQUIREMENTS



Highlights:

- ✓ Consecutively paginated (cover is page 1)
- ✓ Page numbers must match page number displayed in PDF reader software
- ✓ Text-Searchable
- ✓ Each PDF must be less than 25MB

See Appeals Court E-Filed Brief and Appendix Quick Tips

<https://www.mass.gov/files/documents/2016/12/vu/e-filing-quick-tips.pdf>



NEED HELP?



- **Tyler Technologies**
 - 1-800-297-5377
 - For technical assistance (issues with registration, waiver accounts, error messages, etc.)

- **Appeals Court E-Filing Hotline**
 - 617-725-8725
 - For filing related questions (E-filing codes, rejected submissions, etc.)



OTHER RESOURCES



Children and Family Law Division

Deputy Chief Counsel Michael Dsida



Translate page

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Electronic Filing

[CAFL Tips for E-Filing a Brief and Record Appendix](#)

[Guide to electronic submissions in the Appeals Court](#)

[SJC Order regarding electronic filing](#)

- [Interim electronic filing rules for pilot courts](#)
- [Pilot Program for filing DAR's and FAR's beginning November 2, 2015](#)

CHILDREN AND FAMILY LAW

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<https://www.publiccounsel.net/cafl/professional/appellate-practice-tools-and-resources/electronic-filing/>



WINDING DOWN

Adult client

- Call, mail copy of decision
- FAR
- Denied
- Wrap up meeting, followed by representation concluded letter to client. Copy trial counsel
- Paper your file, submit your bill

Child client

- Meet to discuss decision, talk about FAR
- Assess current position, explain next steps
- Hand back over to trial counsel
- Explain next steps to foster parents
- Different ages – different advocacy
 - Aging out clients, advocacy around bridge services
- If visits ordered/desired, advocacy around logistics for those to occur



QUESTIONS??

