

STATE OF MAINE  
SUPREME JUDICIAL COURT

AMENDMENTS TO THE  
MAINE RULES OF CIVIL PROCEDURE  
AND  
THE RULES FOR THE FAMILY DIVISION OF THE MAINE DISTRICT  
COURT

Effective January 1, 2009

**2008 Me. Rules 09**

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure and the Rules for the Family Division of the Maine District Court, are hereby adopted, prescribed, promulgated, and amended, to be effective January 1, 2009.

The purpose of these amendments is to adopt a single set of rules governing domestic relations and family practice as Chapter XIII, within the Maine Rules of Civil Procedure. The specific rules amendments are set forth below. To aid in understanding of the amendments, Advisory Notes appear after the text of each amendment. The Advisory Notes state the reason for recommending the amendment and the relationship of the amendment to rules that are being abrogated, but the Advisory Notes are not part of the amendments adopted by the Court.

1. The Rules for the Family Division of the Maine District Court are abrogated and replaced by Chapter XIII of the Maine Rules of Civil Procedure.
2. Rule 80 of the Maine Rules of Civil Procedure is abrogated and replaced by Chapter XIII of the Maine Rules of Civil Procedure.

3. Rule 4(f)(2) of the Maine Rules of Civil Procedure is amended to read as follows:

(2) *Divorce Cases*. Service of the summons and complaint or a post-judgment motion may be made in an action ~~under Rule 80(a)~~ pursuant to Chapter XIII of these Rules upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person, whether in or outside the state, by registered or certified mail, with restricted delivery and return receipt requested.

#### **RULE 4(f)(2) Advisory Notes**

Rule 4(f)(2) is amended to recognize that Rule 80 is abrogated and to cite to Chapter XIII of these Rules that now governs most Family Division and domestic relations actions. The amendment also recognizes that post-judgment motions may be served by this service by certified mail alternative.

4. Rule 16B(b)(1) of the Maine Rules of Civil Procedure is amended to read as follows:

(1) Actions under Rule ~~80~~, 80D, ~~and~~ 80L, and Chapter XIII;

#### **RULE 16B(b)(1) Advisory Notes**

Rule 16B(b)(1), addressing exemptions from the Rule 16B ADR processes is amended to recognize that Rule 80 is abrogated and to cite to Chapter XIII of these Rules that now governs most Family Division and domestic relations actions.

5. Chapter XIII of the Maine Rules of Civil Procedure is adopted to read as follows:

### **XIII. FAMILY DIVISION**

#### **RULE 100. SCOPE OF THE FAMILY DIVISION RULES**

The rules in this chapter shall govern procedure in the District Court and, where applicable, procedure on post-judgment motions in the Superior Court, in all actions for divorce, annulment, judicial separation, paternity or parentage, parental rights and responsibilities, child support, emancipation, visitation rights of grandparents, and any post-judgment motions arising from these actions. The District Court shall have exclusive jurisdiction over such actions, except that (1) any issue on which there is a constitutional right to a trial by jury may be heard and decided by a jury in the Superior Court upon a proper and timely request for transfer in accordance with Rule 76, and (2) the Superior Court may continue to hear post-judgment motions in actions that were pending or concluded in the Superior Court on or before December 31, 2000 and have not been transferred to the District Court. Reference to the court within this chapter includes District Court Judges, Superior Court Justices, and Family Law Magistrates, unless otherwise specified.

The Maine Rules of Civil Procedure shall govern all matters not addressed in these Family Division Rules.

The rules in this chapter shall be construed to provide a system of justice that is responsive to the needs of families and the support of their children.

### **RULE 100 Advisory Notes**

Rule 100 governs the scope of Chapter XIII for cases now within the exclusive jurisdiction of the District Court. The rule is derived from Rule 80(a) and FAM DIV I.A. The listing of covered subjects is based on the current Family Division Rules. Although child protection, protection from abuse, and juvenile actions also involve families, such actions have specialized and unique procedures. Those procedures are significantly different from actions that have historically been referred to as family matters. As a result, it was determined that at this time, it would be more appropriate to exclude those actions from the general Family Division Rules.

The first paragraph recognizes that the District Court has exclusive jurisdiction over such matters, but also recognizes the possibility that there may be a state constitutional right to a jury trial on certain limited issues within these cases.

The rule uses the term “parentage actions” to recognize de facto parents. *See, e.g. Young v. Young*, 2004 ME 44, 845 A.2d 1144; *C.E.W. v. D.E.W.*, 2004 ME 43, 845 A.2d 1146; *Stitham v. Henderson*, 2001 ME 52, 768 A.2d 598; *Merchant v. Bussell*, 139 Me. 118, 27 A.2d 816 (1942). Parties raising de facto parentage issues must conform to the provisions of this chapter.

Although not restated here, this chapter promotes the goals of the Family Division provided in FAM DIV II.B.<sup>1</sup> Rule 100 outlines the mission of the Family

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<sup>1</sup> The goals of the Family Division as stated in Fam. Div. II.B. have been:

1. To promote a timely resolution of family cases.
2. To address promptly the establishment or modification of child support and to promptly enforce compliance with support orders and all other orders in family cases.
3. To provide effective case management for family cases involving children.
4. To facilitate parenting arrangements in the best interest of children at an early stage in the proceedings.
5. To promote education for the parties about parenting issues and to inform litigants about community services available to help them address family problems.
6. To provide court users with a better understanding of court processes.
7. To identify domestic relations cases in which there is domestic abuse or a power imbalance in order to protect children and adults and to ensure a fair resolution of the case.
8. To promote civility in divorce and other family law proceedings.
9. To minimize the harm to children caused by family law cases.

Division which is that the rules shall be construed to provide a system of justice that is responsive to the needs of families and the support of their children as stated in 4 M.R.S. § 183. *See also*, FAM DIV II.A.

Matters not addressed in the Family Division Rules are governed by the other provisions of the Maine Rules of Civil Procedure.

## **RULE 100A. FORM OF ACTION**

An action under these Family Division Rules shall be known as a Family Division action, docketed as a Family Matter (FM).

### **RULE 100A Advisory Notes**

Rule 100A follows Rule 2 but provides that an action under this rule shall be known as a “Family Division action” rather than a “civil action.” The docketing designations of Family Division cases will not change from present practice.

## **RULE 101. COMMENCEMENT OF ACTION**

**(a) Filing.** Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if

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10. To make appropriate referrals to alternative dispute resolution services.

there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

**(b) Complaint, Petition or Motion Form.** In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence.

**(c) Minor as a Party.** Notwithstanding the provisions of Rule 17(b), a minor party to any action under this chapter need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Nothing in this rule shall be construed to change the current and limited matters in which a minor may be a party to the action.

## **RULE 101 Advisory Notes**

Rule 101 is based on Rule 3 with the change that a Family Division action may be initiated by filing (i) a complaint; (ii) a petition; or (iii) a motion for post-judgment relief. Because of the wide variety of potential Family Division actions and court hearing or return dates, the second sentence of subdivision (a) notes that accompanying any particular complaint, petition, or motion for post-judgment relief must be a notice to the parties served indicating the specific time within which any response to the complaint, petition or motion must be filed and the court where that response must be filed. For example, some actions may be subject to a fairly prompt court hearing. Others await an answer within a specific time, usually 20 days, before beginning processing. Absent some specific statutory or rule based timing or filing requirement, the deadlines for filing the complaint, petition or motion and filing any return of service would be as specified in Rule 3.

Forms will need to be developed to provide the appropriate notice for each type of action, so that the response time and means of response can be indicated when the complaint, petition or motion is served. Present court forms will have to be reviewed to assure compliance with the overall requirements of these rules.

Subdivision (b) tracks Rule 80(b) but with some reordering of sentences and an updated reference to the Uniform Child Custody Jurisdiction and Enforcement Act. A sentence is added noting that a summary sheet must be filed with each initiating action. The filed documents must comply with the information disclosure requirements in 19-A M.R.S. §1753(1) – (4).

Subdivision (c) tracks the first sentence of Rule 80(e). A minor party involved in an action under this chapter need not be represented by a next friend, guardian ad litem, or other fiduciary, unless ordered by the court. The second sentence of subdivision (c) is new, to emphasize that the reference to a minor being a party to an action is not intended to change the current and limited matters in which a minor may be a party. Other issues in Rule 80(e) relating to appointment and compensation of a guardian ad litem are addressed in Rule 107 that more generally addresses court actions available in preliminary proceedings.

## **RULE 102. CONFIDENTIALITY**

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or minor child would be jeopardized by disclosure of identifying information appearing in any document filed with the court, the clerk shall seal the identifying information and shall not disclose the information to any other party or to the general public. Disclosure may be ordered only after a hearing in which the court takes into consideration the health, safety, and liberty of the party or minor child and determines that the disclosure is in the interest of justice. The court is authorized to enter any orders in furtherance of the purposes of this section.

### **RULE 102 Advisory Notes**

Rule 102 is based on 4 M.R.S. §§ 8-A & 8-B and 19-A M.R.S. §1753(5) and follows FAM DIV III.K. It appears in the beginning of this chapter, as the possibility of confidentiality is an important qualification to be understood early in case processing. If identifying information is sealed, the clerk's office must serve the party who sought confidentiality with all the filings made by the other party. In drafting this rule, the committee initially considered adding a requirement that the party seeking confidentiality, if not represented by counsel, provide an alternate mailing address for use by the court and by the other party unless otherwise ordered by the court. This was intended to avoid adding workload to clerks' offices. The Family Division staff recommended that this requirement not be added, as it anticipates that clerks' offices can handle any necessary forwarding without great difficulty.



## **RULE 103. PROCESS**

All actions commenced by filing a complaint, petition or a motion for post-judgment relief with accompanying documents as required by this chapter shall be personally served upon the other party or parties in accordance with Rule 4, except as may be provided in these rules or by statute. In all actions under this chapter, including motions for post-judgment relief, service may be made by registered or certified mail, with restricted delivery and return receipt requested as permitted under Rule 4(f)(2). This form of service may be made in or outside of the state, provided that the party being served is subject to the court's jurisdiction.

### **RULE 103 Advisory Notes**

Rule 103 states that all actions to be commenced by filing a complaint, petition or motion for post-judgment relief must be personally served on the other party or parties except as may be provided in these rules or by statute. In addition, the rule permits the service of a complaint or petition and summons by registered or certified mail with restricted delivery and return receipt as currently provided in Rule 4(f)(2). The process outlined in this rule continues current practice in Family Division actions that requires that a complaint, a petition and a motion for post-judgment relief be personally served to commence an action. This is one important difference between Family Division actions and other civil actions. In other civil actions, motions for post-judgment relief generally need not be personally served but are served in the same manner as other civil motions. Because a motion for post-judgment relief in a Family Division action is a motion to essentially reopen a judgment, and may be filed many years after entry of the original judgment, personal service is required to assure proper notification and attention of the other party. Service is governed by Rule 4.

## **RULE 104. PRELIMINARY INJUNCTION**

**(a) Preliminary Injunction.** In all actions for (i) divorce; (ii) judicial separation; or (iii) spousal or child support following a divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, upon commencement of the action, shall issue a preliminary injunction on a form including requirements specified by statute.

(1) The preliminary injunction shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and, if the plaintiff is represented, state the name and address of the plaintiff's attorney. The plaintiff shall obtain the preliminary injunction form from the clerk and complete it before filing.

(2) The plaintiff shall serve the preliminary injunction, along with the summons and complaint or motion, upon the defendant in accordance with Rule 4 and Rule 103. The preliminary injunction is effective against the plaintiff upon the commencement of the action. It is effective against the defendant upon service of a copy of both the complaint or motion and the preliminary injunction order. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint or motion to be served.

(3) The preliminary injunction remains in effect until entry of a final judgment, until the action is dismissed or until the preliminary injunction is revoked or modified by the court. It is enforceable by all remedies made available by law, including contempt of court.

**(b) Revocation or Modification.** A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification. A motion for revocation or modification of the preliminary injunction does not require a mediation before a hearing is held. On 7 days notice to the other party or on shorter notice as the court may order, the court shall proceed to hear and determine the motion as expeditiously as justice requires.

**(c) Post-Judgment Proceedings.** The injunction authorized in this section does not apply to post-judgment actions except as provided in subdivision (a)(iii) above.

### **RULE 104 Advisory Notes**

Rule 104 governs statutory preliminary injunctions. Once an action for divorce, judicial separation, or separate support is initiated, 19-A M.R.S. § 852 and 19-A M.R.S. § 903 require that a preliminary injunction issue and specify the terms of the preliminary injunction order. The preliminary injunction procedure applies to original actions identified in the rule. It does not apply to actions initiated by a post-judgment motion, except for a narrow category of post-judgment motions for support where a divorce court lacked jurisdiction over an absent spouse. The purpose of the preliminary injunction is to protect property of

either or both parties from dissipation and subject the property to control of the court during the divorce or other adjudicative process. The form and language of a preliminary injunction should track the statutes upon which the preliminary injunction is based. The rule also clarifies that mediation is not required prior to a hearing on a modification or a revocation of a preliminary injunction.

### **RULE 105. ANSWER; RESPONSE; COUNTERCLAIM**

**(a) Answer and Appearance.** Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 20 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 20 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). When the court schedules a hearing on any matter before the 20 day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

If parental rights and responsibilities of a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an

emancipation action or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.

A party who does not file an answer or response may enter an appearance before commencement of a hearing and be heard on issues of paternity or parentage, parental rights and responsibilities for children, child support, spousal support, counsel fees, and distribution of marital or nonmarital property.

**(b) Counterclaims and Cross-claims.** A grandparent visitation or emancipation action may not be asserted as a counterclaim or cross-claim and no counterclaim or cross-claim may be asserted in those actions. Any other Family Division action that could be brought pursuant to this chapter, including an action allowable by Rule 111, can be asserted as a counterclaim and cross-claim. Except for an action that could be filed as a Family Division action pursuant to this chapter, no counterclaim shall be permitted in any action pursuant to this chapter. Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

#### **RULE 105 Advisory Notes.**

Rules 105 and 106 incorporate significant portions Rule 12, with adjustments for Family Division actions. Placement of the answer and counterclaim requirement at this point in the rule, immediately following the service requirements and preceding the motion requirements, appears more logical for progression of the Family Division actions.

Rule 105, while based upon Rule 12(a), does not incorporate that rule by reference, but rather explicitly states the 20 day responsive pleading requirements

to assure that parties responding to Family Division actions are fully informed of the deadlines for response. 19-A M.R.S. § 2009 provides an exception to the 20 day rule. In child support actions, section 2009 requires the response to be filed within 30 days.

The provisions for responsive pleadings by individuals outside of the Continental United States and Canada are incorporated by reference from Rule 12(a).

The rule modifies Rule 12(a) practice for those instances where the court may schedule a hearing on a particular matter before the 20 day response time normally accorded for answer after service of a complaint or post-judgment motion. In such cases, the response must be filed prior to the time set for hearing, if the notice of hearing was served with the complaint or post-judgment motion. This rule makes the time for filing the response to post-judgment motions the same as the response time for original actions. This rule does require a notice of response to post-judgment motions. However, Rule 105(a) specifies that a party who does not file an answer or response may still be heard on most issues, upon entering an appearance before commencement of a hearing. *See also* Rule 117 addressing Default.

Rule 105(b) contains the restriction on counterclaims in certain Family Division actions, consistent with the restriction on counterclaims in Rule 80(b). Because grandparent visitation actions and emancipation actions are Family Division actions, this rule clarifies that grandparent visitation and emancipation actions cannot be brought as counterclaims or cross-claims, and other Family Division actions cannot be asserted as counterclaims or cross-claims to such actions. Any other Family Division action may be brought as a counterclaim or cross-claim. Actions authorized to be joined pursuant to Rule 111 may be asserted as a counterclaim or cross-claim.

## **RULE 106. DEFENSES**

**(a) Defenses to be Asserted.** Every defense, in law or fact, shall be asserted in the responsive pleading except that the following defenses may be asserted by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over

the person; (3) improper venue; (4) insufficiency of Process; and (5) insufficiency of Service of Process.

**(b) Waiver or Preservation of Certain Defenses.** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service is waived if omitted from a responsive pleading or not made by motion. Whenever the court finds that it lacks jurisdiction over the subject matter, the court shall dismiss the action.

### **RULE 106 Advisory Notes**

Rule 106, subdivision (a) is derived from Rule 12(b). It is more limited than 12(b), addressing only those defenses that may apply to Family Division actions.

Subdivision (b) is based on Rule 12(h).

### **RULE 107. ORDERS PRIOR TO JUDGMENT**

**(a) Motions for orders prior to judgment.** At any time prior to judgment in any action under this chapter in which the court has personal jurisdiction over the parties, the court may order the following:

- (1) parental rights and responsibilities for any minor children, including health insurance and child support;
- (2) appointment and payment of a guardian ad litem;
- (3) participation in a parental education program;
- (4) paternity testing;

- (5) psychological or other evaluations;
- (6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;
- (7) possession of owned or rented real and personal property pending the final judgment;
- (8) payment of debts and obligations;
- (9) sale of any property of the parties, along with the disposition of the proceeds;
- (10) interim spousal support;
- (11) a job search;
- (12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;
- (13) prohibition of either party from imposing any restraint on the personal liberty of the other;
- (14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and
- (15) dissolution or modification of a preliminary injunction or an attachment or trustee process.



No orders prior to judgment may be entered without notice to the parties or upon motion. The motion may be accompanied by a draft order granting the relief requested.

In any action under this chapter in which the court lacks personal jurisdiction over the defendant, the court may at any time prior to judgment, and governed by the same notice provisions, enter any of the foregoing orders that it deems proper that do not involve the payment of, or the allocation of responsibility for the payment of, money.

**(b) Expedited Hearings.** A party, or a guardian ad litem, may request that a hearing on a motion be expedited. Such requests shall be in the form of a motion for expedited hearing and shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing. The request for an expedited hearing shall be considered in light of all relevant factors, including:

- (1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;
- (2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest of a child or the parental rights of a party;

- (3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;
- (4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;
- (5) any unreasonable delay on the part of the moving party in filing the motion;
- (6) any conduct on the part of either party impairing a fair and just resolution of the issues.

The moving party must determine and report to the court whether any other party objects to the requested relief and the motion for expedited hearing. The motion shall contain a notice stating the time for a response to the motion. Responses to a motion for expedited hearing shall be filed in writing within 7 days of the notice of the motion.

The court may rule on a motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable and good faith effort to notify the other parties or if delay would defeat the purposes of the motion. No ruling granting substantive relief shall be made without notice and opportunity to be heard.

### **RULE 107 Advisory Notes**

Rule 107 is based on Rule 80(d) and 19-A M.R.S. §§ 105 and 904 relating to preliminary matters. It would also implement the recommendation of the Family

Division Task Force to establish a procedure to seek an expedited hearing. It follows 80(d) with appropriate adjustments to fit it into the context of the Family Division Rules. The list of actions the court may take, as stated in 80(d), is separated out into individually numbered subparagraphs and some new categories of actions are added that reflect current practice and provide consistency with Rule 110A(b)(1) which is derived from FAM DIV III.A.1. The rule clarifies an uncertain issue as to whether the court has authority to order the sale of property pending a divorce as well as order the disposition of the proceeds. The new rule adds provision for appointment and payment of a guardian ad litem, as presently found in Rule 80(e).

This rule does not change the current practice before the magistrates that permits an oral motion for an order prior to judgment. The sentence requiring the filing a child support affidavit when child support is an issue is deleted because that language is provided by Rule 108.

Rule 107 deletes the language found in Rule 80(d) that provided for a hearing 7 days after a party had notice of a motion. It was deleted because no substantive standard existed for considering that motion, and the procedure was seldom used. The rule substitutes a requirement for a written response within 7 days of notice of the motion, leaving scheduling of any hearing to the court. The rule also outlines criteria to grant a request for an expedited hearing if the circumstances of the case warrant immediate court intervention.

## **RULE 108. CHILD SUPPORT AFFIDAVITS AND WORKSHEETS, FINANCIAL STATEMENTS, AND REAL ESTATE CERTIFICATES**

### **(a) Child Support Affidavits.**

(1) In any proceeding under this chapter in which child support is an issue, the parties shall exchange and file child support affidavits. Except for actions initiated by the Department of Health and Human Services, the party initiating the action shall serve and file a completed child support affidavit with the complaint, petition

or motion. The responding party shall file a completed child support affidavit with the response or appearance but no later than the case management conference.

(2) If the Department of Health and Human Services seeks to initiate or modify a support order and is unable to secure the affidavit of a custodial parent who is in receipt of public assistance, the Department may submit an affidavit based upon its information and belief regarding the custodial parent's income.

**(b) Child Support Worksheets.** In any proceeding under this chapter in which child support is an issue, the court may, at any time, order the parties to file child support worksheets.

**(c) Financial Statements.** In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, the parties shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and nonmarital property. The financial statement shall be filed within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier.

**(d) Miscellaneous requirements.**

(1) Financial statements, child support affidavits and child support worksheets shall be filed on court approved forms that are published by the court.

(2) All child support affidavits and financial statements shall be signed by the party under oath.

(3) Any financial statement or child support affidavit filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available, as necessary, to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support.

**(e) Real Estate Certificates.** In every divorce action in which any party has an interest in real estate, the parties shall file with the court, at least 3 days before the hearing, the following information on the court approved form: the book and page numbers of an instrument describing the real estate; the applicable Registry of Deeds; and the town, county and state where the real estate is located.

**(f) Sanctions.**

(1) If a party fails to file any child support affidavit, child support worksheet, financial statement, or real estate certificate required by these rules, the court may make such orders in regard to such failure as are just, including imposition of sanctions, as appropriate, including but not limited to sanctions set forth in Rule 37(b)(2). However, a magistrate may not impose any sanctions or penalties based upon a determination of contempt under Rule 66.

(2) A child support order shall be entered notwithstanding a party's failure to file a child support affidavit. If a party fails to file a child support affidavit without good cause, the court may take any of the following actions:

A. Set that party's gross income in accordance with:

(1) The statutory minimum wage for a 40-hour work week;

(2) Maine Department of Labor statistics;

(3) An affidavit submitted by or testimony of the opposing party; or

(4) Information included in that party's most recent federal income tax return.

B. Enter an order requiring that party to release all requested information to the court. Failure to comply with the order may result in a finding of contempt punishable by a fine or jail sentence.

C. Award attorney fees.

### **RULE 108 Advisory Notes**

Rule 108 addresses the requirements for filing child support affidavits, child support worksheets and financial statements as found in Rule 80(c) and real estate certificates found in Rule 80(j). Under subdivision (a), child support affidavits must be filed in all cases where child support is an issue. Child support is always an issue in original actions such as a divorce involving minor children, parental rights and responsibilities actions and parentage and paternity actions. This is a departure from the current rule that requires that child support affidavits be filed in every action involving a minor child. The prior rule was broader than the statute, 19-A M.R.S. § 2004(1)(A). The committee believes that in many post-judgment proceedings, such as enforcing and modifying contact rights, child support affidavits are not necessary.

Rule 108 interfaces with Rule 112 because one of the original purposes for requiring the filing of the child support affidavit was to reduce discovery. Rule

112 provides the authority for the court to order the parties to file child support affidavits when not required by Rule 108. Accordingly, when the court (primarily magistrates who have discussions with the parties at conferences) determines that child support should be reviewed, the court can order the parties to file child support affidavits.

Subdivisions (a) (1) and (2) include the qualification and exemption of the Department of Health and Human Services from such filings provided by FAM DIV III.A.2.

Subdivision (b) departs from the prior requirement that parties must file child support worksheets. The experience of magistrates who handle virtually all of these cases suggests that the initial required worksheets are frequently neither filed nor useful to the court. This rule deletes that requirement but permits the court to order the filing of worksheets.

In *Lawrence v. Webber* 2006 ME 36 ¶ 3 n. 4, 894 A.2d 480, the Law Court noted that the trial court may have been aided had the parties filed child support worksheets as required by 19-A M.R.S. §2004(1)(C). The magistrates, however, are in a better position to know the appropriate time to order the parties to file worksheets, which will usually be before hearings and conferences. The court now has available software programs that perform worksheet calculation functions upon entry of appropriate income and other figures.

In subdivision (c), financial statements must be filed in all divorce or judicial separation actions where division of property, spousal support, or counsel fees is an issue. The rule is developed from Rule 80(c). Rule 80(c), however, neither limits the requirement for filing of financial statements to divorce and judicial separation actions nor includes counsel fees as an issue. In practice, however, financial statements are filed only in the two original actions. Also, the court-approved financial statement form refers to counsel fees. Rule 108 interfaces with Rule 112 because the filing of the financial statement triggers discovery. In practice, financial statements were not filed in post-judgment motions or parental rights and responsibilities complaints so that triggering discovery with the filing of the financial statement does not make sense. The committee believes that the rule should reflect practice. Division of property is only an issue in original actions. Although spousal support and counsel fees may be issues in both original actions and post-judgment motions, Rule 108 requires that the financial statement be filed only in the original action, which is the current practice. Rule 112 provides that the court, on its own motion or at the request of the parties, may order the filing of

financial statements in any proceeding under this chapter in which it would assist in discovery or otherwise be appropriate.

Subdivision (c) also changes the time period for filing the financial statement. Often in practice, the financial statement was exchanged at mediation which does not adequately permit the parties to prepare for mediation. The filing of the financial statement shall be ordered in the Family Division Scheduling Order to be within 21 days of the date of the order or before mediation, whichever is earlier. Finally, subdivision (c) also provides the court with authority to shorten or lengthen the time period for filing the financial statement as appropriate.

Subdivision (d) outlines other miscellaneous requirements located in Rule 80(c).

Subdivision (e) relating to filing a real estate certificate is included in Rule 108 so that all required supplemental financial and asset filing requirements are contained within one rule.

Subdivision (f) relates to actions the court may take if there is a failure to file required materials. Subsection (f) (1) is based on Rule 80(c). It indicates that if a party fails to file any required affidavit, worksheet, financial statement, or real estate certificate required by this rule, the court may make such orders in regard to the failure to file as are just, including the imposition of sanctions as appropriate. The rule clarifies that magistrates are not permitted to impose any sanctions or penalties based upon a determination of contempt under Rule 66.

Subdivision (f) (2) is based on FAM DIV III.H.2. It authorizes entry of child support orders notwithstanding a party's failure to file affidavits and sets the process by which the court may determine income levels for assessment of child support. It also allows the court to impose certain obligations for filing upon non-cooperating parties and it allows award of attorney fees. All of this is as provided in FAM DIV III.H.2.

## **RULE 109. FAILURE TO APPEAR; SANCTIONS**

If, after proper notice, a party fails to appear at a case management, pretrial or status conference, mediation or a hearing, without good cause, the court may



take appropriate action, including but not limited to, issuing an interim, status conference or pretrial order, or a default or a default judgment as provided in Rule 117. If, after proper notice, the moving party fails to appear at a case management, pretrial or status conference, mediation or a hearing, without good cause, the moving party's complaint, motion or other pleading may be dismissed by the court with or without prejudice. Costs may be awarded as allowed by these rules, as well as the cost of mediation, and reasonable attorney fees.

### **RULE 109 Advisory Notes**

Rule 109 outlines the actions a court may take if a party fails to appear at a proceeding. It follows FAM DIV III.H.1. The rule refers to Rule 117 regarding default judgments.

### **RULE 110A. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING MINOR CHILDREN**

**(a) Family Law Magistrates.** In all Family Division actions involving minor children, Family Law Magistrates shall have authority to: (1) hold case management conferences and other prehearing or pretrial conferences including judicial settlement conferences; (2) determine whether a party or counsel may attend a conference, mediation or hearing by telephone; (3) issue interim orders prior to judgment under Rule 107(a) and act on motions for expedited hearings under Rule 107(b); (4) issue final orders establishing or modifying child support; and (5) issue orders in child support enforcement actions. In an uncontested

proceeding, magistrates may issue divorce judgments, paternity judgments, parentage judgments, judicial separation decrees, final orders establishing parental rights and responsibilities, and orders on post-judgment motions modifying any such original orders.

In contested proceedings, with the consent of the parties, magistrates may hear and decide interim orders establishing parental rights and responsibilities. In contested proceedings under a pilot project established by the Chief Justice of the Supreme Judicial Court, a magistrate may hear and decide final divorce judgments. When the parties are subject to a Protection from Abuse order, magistrates may amend the parental rights and responsibilities portion of the protection order to conform with the orders authorized above.

Nothing in these rules shall prohibit a judge from managing a case as provided in these rules.

**(b) Case Management.**

(1) *Case Management Conferences.* Whenever a complaint, petition or motion is filed in any proceeding involving minor children, except an emancipation action, the parties, and if represented their counsel, shall attend a case management conference with a magistrate or judge. At the initial conference and any subsequent conference the parties shall be prepared to address any issues in the case that may be raised by the court or the parties including, but not limited to: any

issues in dispute; the need for an interim order or orders under Rule 107(a); a prehearing conference; an uncontested hearing date; and any other matters pertinent to the case. Following the conference, the magistrate shall enter a case management order and other orders as appropriate.

In appropriate circumstances, a magistrate may dispense with a conference and set the matter promptly for hearing, may enter agreements on the record at the conference, may hold a hearing immediately following the conference, or may advise the parties that the matter will be referred to a judge.

(2) *Notice of Conference.* Except for motions to modify support filed pursuant to 19-A M.R.S. § 2009, the parties will be notified of the date and time of the case management conference within two weeks after the filing in court of the proof of service of the complaint, petition or motion. The conference will be held after the time for filing a response has passed. When a motion to modify support is filed pursuant to section 2009, the clerk will schedule a conference after receiving a response to the motion. If there is no response, a conference will not be scheduled, and the court will proceed in accordance with the provisions of section 2009.

(3) *Requests to Reschedule or Waive Conference or Mediation.*

(A) Rescheduling

(i) Continuation. Requests to continue a conference shall be in writing and may be granted for good cause shown pursuant to Rule 40(a). An agreement of the

parties to continue, with an assurance by both parties that the children's needs are being met, constitutes good cause. Requests to continue mediation must proceed in accordance with Rule 92(b)(5)(G).

(ii) Deferral of Conference. Parties may request by letter, accompanied by the appropriate mediation fee, that the case management conference be deferred for up to 90 days and that they proceed directly to mediation pursuant to Rule 92(b). The letter must state that the parties or their counsel have conferred and that they agree that the children's needs are being met, there are no discovery disputes, there are no issues of domestic violence, financial statements will be filed with the court before mediation, and both parties join in the request. Both parties, or an attorney of record, must sign the letter. The appropriate mediation fee must be paid to the court when mediation is requested. The conference shall be scheduled by the clerk for no later than 90 days after the deferral.

(B) Waiver of Conference. Instead of attending an initial case management conference following the filing of a complaint or petition, the parties may file a certificate stating that they have reached a temporary agreement on all issues relating to the children. The certificate must be signed by both parties or their attorneys, indicate what issues, if any, remain unresolved in the case, and include a date for a status conference, mediation, payment of mediation fee, or a final hearing not to exceed 90 days from the date of the certificate. The parties are

responsible for obtaining dates from the court. With the certificate, the parties must submit for the magistrate's review child support affidavits, worksheets, a written agreement on parental rights and responsibilities that addresses the children's residence, support or maintenance, and parent-child contact, and if an interim order is requested, a proposed order incorporating the terms of the agreement. The magistrate may require the parties to attend a case management conference if the agreement appears inequitable on its face, if the agreement provides for a deviation from the child support guidelines, if there has been a history of domestic abuse, or for any other reason. Upon receipt of a written statement by either party that the agreement is not being followed, a case management conference will be scheduled.

(4) *Interim Relief.*

(A) *Interim Orders Without Hearing.* At any stage in the proceedings, a magistrate may enter interim orders with the consent of the parties or when a party is in default. Whether or not the parties agree, a magistrate may enter a Family Division Scheduling Order. At their initial court appearance, the parties shall be advised of their right to have a judge determine interim parental rights and responsibilities. To exercise this right, a party must file a written request with the court clerk either before or at the time of their initial court appearance. In the

absence of such a written request, the parties' consent will be presumed, and a magistrate may determine interim parental rights and responsibilities.

(B) Mediation. When the parties cannot reach an interim agreement on all issues or if the court defers a conference at the request of the parties, mediation shall be promptly scheduled as provided in Rule 92(b). The magistrate may waive the required mediation for good cause shown. An agreement reached through mediation shall be reviewed by the court. If approved, it may be entered as either an interim or final order.

(C) Interim Orders After Hearing. If, after mediation, the parties have not reached an interim agreement, the magistrate may conduct a hearing on the contested issues and enter an interim order. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

(5) *Proceedings After Entry of Interim Order.*

(A) Uncontested Proceedings. If there are no issues in dispute following the entry of an interim order, the case shall be scheduled for an uncontested final hearing before the court.

(B) **Contested Proceedings.** When issues remain in dispute and mediation has not been held on these issues, the case shall be referred to mediation as provided in Rule 92(b).

(i) If the issues are resolved by mediation, the case shall be scheduled for a final, uncontested hearing before the court.

(ii) When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing.

(6) *Post-Judgment Motions.*

(A) **Motions to Modify.**

(i) The case management process stated in these rules shall be used for post-judgment motions to modify.

(ii) **Uncontested Motions.** Instead of attending a case management conference on a post-judgment motion, the parties may file a certificate stating that a hearing is not necessary because the motion is unopposed or the parties have reached an agreement. The certificate must be signed by both parties under oath, and be accompanied by a stipulated order. When the proceeding is a motion to modify child support and the responding party does not request a hearing, the conference

may be waived and the magistrate may enter an order pursuant to 19-A M.R.S. § 2009(6).

(B) **Motions to Enforce.** A motion to enforce a judgment or order shall be addressed in a timely fashion and shall not be included in the case management process. The motion shall be referred to a judge who may refer the motion to mediation, or may refer the action for prompt scheduling of a hearing before a judicial officer. Relief on a motion to enforce may include amendment of a judgment or order if such is necessary to achieve the purposes of the judgment or order.

(C) **Contempt.** Contempt proceedings shall be referred to a judge.

(7) *Effect of Case Management and Interim Orders.* A magistrate's case management and interim orders are effective when signed and remain effective until amended or until a final order is entered. A magistrate's order is enforceable as an order of the court and is entitled to full faith and credit. An interim order does not constitute the law of the case, and the issues may be decided de novo at the final hearing.

### **RULE 110A Advisory Notes**

The rule recognizes that pre-hearing procedure applies to two groups of Family Division actions -- those with minor children and those without. Cases involving minor children should receive priority treatment. Rule 110A applies to actions involving minor children. Rule 110B applies to actions that do not involve minor children.



Rule 110A incorporates substantial portions of the current Family Division rules relating to calendaring and scheduling of cases and conduct of case management conferences.

Subdivision (a) is based on FAM DIV I.C. making specific reference to the authority and limitations on authority of Family Law Magistrates. It also corresponds with the accepted practice that emancipation actions have not been placed in the case management system because of their summary nature. It clarifies that magistrates may act in uncontested matters on post-judgment motions.

Subdivision (b)(1) is based on FAM DIV III.A.1. It relates to scheduling of conferences before Family Law Magistrates. FAM DIV III.A.1 states a list of issues that may be raised by the court or the parties and be considered at the conference. Subdivision(b)(1) does not include the list. The list of issues that may be addressed and actions that may be considered is stated in Rule 107(a) relating to interim orders and cross referenced in this draft to avoid duplication and confusion that might result from any different wording.

Child support affidavits are based on FAM DIV III.A.2 and are addressed by Rule 108.

Subsection (b)(2) is based on FAM DIV III.A.3.

Subsection (b)(3)(A)(i) is based on FAM DIV III.A.4 and is amended to include requests to continue mediation.

Subsection (b)(3)(A)(ii) relating to deferral of a conference is a new provision and permits the parties to attend mediation before a conference with the court. The amendment also requires the parties to pay the mediation fee if mediation is requested.

Subsection (b)(3)(B) is based on FAM DIV III.A.5 and requires the parties to obtain dates for mediation and payment of the mediation fee.

Subsection (b)(4) is based on FAM DIV III.B.

Subsection (b)(5) is based on FAM DIV III.C.

Subsection (b)(6) is based on FAM DIV III.D. and Rule 80(k)(2). The new rule provides that Motions to Enforce shall be eliminated from the case

management system to avoid delay in enforcing existing orders. This is consistent with the recommendation of the Family Division Task Force to reduce the number of conferences in family matters.

FAM DIV III.E & F. are addressed in Rule 114.

Subsection (b)(7) is based on FAM DIV III.G(1). FAM DIV III.G.2-4 is addressed in Rule 118.

### **RULE 110B. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING NO MINOR CHILDREN**

The procedures in this rule apply to all actions under this chapter in which there are no minor children, except post-judgment motions.

**(a) Scheduling Order.** Upon the filing of an answer, response, or entry of appearance, the court shall issue a Scheduling Order which sets deadlines for: filing of financial statements and real estate certificates, scheduling and completion of mediation as provided in Rule 92(b), completion of discovery, date for exchanging witness and exhibit lists, scheduling of a pre-trial conference if necessary, filing of motions, and placement of the action on the trial list. Before the issuance of the Scheduling Order, parties may file an agreed-upon Scheduling Order covering all the deadlines outlined above. The Scheduling Order may be modified upon motion and for good cause shown. An agreement by the parties to amend the Scheduling Order may constitute good cause shown. Sanctions may be imposed for non-compliance with the order.

**(b) Failure to Respond.** If no answer, response, or entry of appearance is filed, the clerk shall set the case for an uncontested hearing.

**(c) Prehearing Conference.** Upon the court's own motion or at the request of a party, the court may hold prehearing conferences, including a judicial settlement conference, as provided in Rule 16(b) or Rule 16A and to address prehearing and hearing issues including case management. The court shall exercise its discretion in deciding whether to permit a party to participate in conferences, mediation or hearings by telephone.

**(d) Post-Judgment Motions.** The pretrial procedure for post-judgment motions in which there are no minor children shall be left to the discretion of the court upon review of the filings.

### **RULE 110B Advisory Notes**

Because there is no case management system for cases that do not involve minor children, some system-wide procedure should be implemented. Scheduling Orders shall be issued in cases that are not subject to the Case Management System. These orders have been employed in some of the courts across the state and have been effective at managing the flow of cases when there is no Family Law Magistrate oversight. These cases may involve highly charged, emotional issues. There may be cases in which both parties agree that the court-ordered schedule does not meet their needs. The court should honor a request made jointly by the parties to amend the Scheduling Order. Scheduling Orders need not be issued when there is no answer, response or entry of appearance. The rule also provides that these cases should be set for uncontested hearing so that they do not lay dormant.

Rule 110B is the former Rule 80(h). It has been the practice of the court to hold prehearing conferences to discuss discovery and trial issues and to hold

judicial settlement conferences. All conferences before a final hearing are prehearing conferences and the authority to hold them is derived from this rule. The rule permits attendance by telephone, if permission is acquired before the conference, mediation or hearing.

Because there is a variety of post-judgment motions, a standard Scheduling Order would be impossible to draft. The court must exercise its discretion to determine the appropriate pretrial procedure in any particular case after review of the filings.

## **RULE 111. JOINDER, CONSOLIDATION AND INTERVENTION**

### **(a) Joinder.**

(1) *Joinder of Claims and Remedies.* Grandparent visitation and emancipation actions shall not be joined with other Family Division actions. Any other claim, counterclaim or request for relief that could be brought as a separate Family Division action may be joined to an action under these rules.

(2) *Joinder of Persons or Entities.* The only persons who may be joined as parties to an action under these rules are persons or entities specifically authorized to file or participate in a Family Division action by Title 19-A of the Maine Revised Statutes. However, persons who file emancipation or grandparents visitation actions may not be joined.

**(b) Consolidation.** Rule 42 governs consolidation in Family Division matters.

**(c) Intervention.** A person may petition to intervene in a Family Division action only when that intervention is specifically authorized by statute, or when the

individual or entity would be authorized to file a complaint or post-judgment motion involving one or more of the same parties and issues that are being addressed in the Family Division action in which the person is seeking to intervene. Where intervention is authorized, practice regarding intervention is governed by Rule 24.

### **Rule 111 Advisory Notes**

Joinder, consolidation and intervention capability for Family Division actions is very different from regular civil practice. In civil practice, joinder of actions involving parties and claims is liberally allowed. In Family Division actions, subdivision (a)(1) prohibits joinder of grandparent visitation and emancipation actions. Subdivision (a)(1) further limits joinder only to other claims or remedies that could be originally brought as a Family Division action. This is derived from Rule 80(b). Thus, for example, an action for assault may not be joined with an action for divorce.

An earlier version of this draft included a sentence similar to 19-A M.R.S. § 953(4) (2007), which provides:

**4. Disposition of marital property.** If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce prior to January 1, 1972, or non marital property owned by the parties to the divorce action, the court shall also order disposition in accordance with subsection 1.

Section 953(4)'s predecessor – 19 M.R.S.A. § 722-A(4) - was enacted in response to the *Young v. Young*, 329 A.2d 386, 390 n. 4 (Me. 1974), which raised, but did not decide, the question of whether the then new equitable distribution statute could be constitutionally applied to property acquired prior to the enactment of the statute. This question was subsequently answered in the affirmative in *Fournier v. Fournier*, 376 A.2d 100, 102 (Me. 1977). In *Bryant v. Bryant*, 411 A.2d 391 (Me. 1980), the Law Court observed that section 953(4)'s predecessor – 19 M.R.S. § 722-A(4) – had become surplusage and the written request it provided for was no longer required. Thus, reference to section 953(4), and the

corresponding sentence in the earlier draft of Rule 111(a)(1) is no longer necessary to assist resolution of property division issues.

Subdivision (a)(2) narrowly restricts those persons who may be joined in a Family Division action. The only persons who may be joined to a Family Division action would be individuals or entities (most often the DHHS), who would be authorized to file or participate in a Family Division action involving the same subject matter, except for persons who assert or defend grandparent visitation and emancipations actions. Thus two mothers could join a child support enforcement action against one father of their children. DHHS could also join the action.

Subdivision (b) of this rule relates to the consolidation of matters for trial. The court's authority and flexibility under current Rule 42 is sufficient to cover issues of consolidation in Family Division actions. Courts should consolidate Family Division actions for trial with protection from abuse actions only when consolidation does not delay any necessary hearings to insure the safety or protection of a party or the minor child or children of a party.

Subdivision (c) indicates that no parties may intervene in an action except where intervention is specifically authorized by statute or where the individual or entity seeking to intervene would be authorized to bring or participate in an action involving the same subject matter under the Family Division rules. In cases where intervention may be authorized, the practice for intervention is governed by Rule 24.

## **RULE 112. DISCOVERY**

**(a) Discovery Limitations.** In any proceeding under this chapter, a party may obtain discovery on issues of spousal and child support, counsel and guardian ad litem fees, and disposition of property and debt as in any other civil actions. However, when financial statements are required under Rule 108(c), discovery may be initiated only after the parties have filed and exchanged the financial statements. If the exchange does not occur, the party who has filed a financial

statement may serve discovery after the time period has expired as provided in Rule 108(c). On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

**(b) Financial Statements.** In any proceeding under this chapter upon motion of a party or its own motion, the court may order the parties to file and exchange financial statements or child support affidavits when the filing of these documents is not required under Rule 108. The court may also order the supplementation of financial statements or child support affidavits.

**(c) Discovery Procedure.** Where discovery occurs, discovery practice shall be governed by Rules 26 through 37. If a party fails to comply with discovery, compliance with discovery may be enforced by a judge or magistrate. A magistrate may impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanctions or penalties based upon a determination of contempt under Rule 66.

**(d) Updated Statements.** The parties shall update child support affidavits and financial statements 7 days before trial.

### **RULE 112 Advisory Notes**

Rule 112 is based on Rule 80(g). It extends the restrictions on discovery presently applicable to divorce cases to all Family Division actions. Under this rule—and the present Rule 80(g)—discovery without court approval is limited to financial issues. If Rule 108 requires the filing of financial statements, discovery may begin only after parties have exchanged financial statements or after a party

has filed a financial statement and waited for the expiration of the time periods under Rule 108. On issues other than financial issues, discovery may be had only with court approval for good cause shown. Thus, no discovery is allowed, without court approval, on parental rights and responsibilities issues.

Rule 108 (c) does not require the filing of financial statements in all actions. For example, post-judgment motions and Complaints for Determination of Parental Rights and Responsibilities do not require filing of financial statements. Therefore in those proceedings, discovery may be initiated as permitted in the Rules 26 through 37. The court, however, may require the filing of financial statements if such exchange of information would reduce the amount of discovery. In addition, if the filing of a child support affidavit is not required under Rule 108, the court may order the filing and exchange of child support affidavits if the court obtains information indicating that the child support should be reviewed. Also the court may order supplementation of the financial statement or child support affidavit.

Where discovery occurs, discovery practice shall be as provided in Rules 26 through 37. The discovery rules provide adequate tools for both discovery and providing testimony for trial. The rule provides that magistrates shall have the authority to impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanction or penalties based upon a determination of contempt under Rule 66.

The preferred practice is that financial information is updated before a trial, and as a result the updating requirement is set in the rules.

### **RULE 113. TIME FOR FINAL HEARING**

An action for divorce or annulment shall not be in order for final hearing until 60 days or more after service of the summons and complaint; nor shall it be in order for hearing until there is on file with the court a statement signed by the plaintiff, which may be contained in the complaint, stating whether any divorce or annulment actions have previously been commenced between the parties, and if so



the designation of the court or courts involved and the disposition made of any such actions. Except as the court may otherwise direct, no case involving real estate shall be ready for final hearing until the real estate certificates have been completed as required by Rule 108.

If the responding party has not entered an appearance, the party initiating the action shall file a Federal Affidavit stating under oath that the responding party is not serving in the military or an affidavit signed by the responding party waiving rights conferred by the Service Members Civil Relief Act.

Other matters may be scheduled for trial at such time as pretrial proceedings are complete and the matter is in order for hearing on the merits. All actions under this chapter shall be transferred to the trial list by order of the court.

### **RULE 113 Advisory Notes.**

Rule 113 is based on Rule 80(i). By referring to final hearings, the rule clarifies that interim hearings are available to the parties before the 60 days.

The rule recognizes that the court has the authority to set cases for trial or final hearing and that in some actions such as Emancipation, Motions for Enforcement and Motion for Contempt, the court may order a case to a final hearing without going through the case management system. This paragraph of the rule is derived from Rule 80(h).

### **RULE 114. TRIAL**

**(a) Trial Process.** A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the

child support guidelines. The Maine Rules of Evidence shall govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

**(b) Final Orders by Family Law Magistrates.**

(1) *Child Support.* A magistrate may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

(2) *Other Matters.* A magistrate may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A magistrate may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a magistrate may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

**RULE 114 Advisory Notes**

Rule 114 is based on Rule 38 and FAM DIV III.E.&F. but limited to Family Division cases and recognizing the ability of both the court and magistrates, with

appropriate authorization, to try Family Division cases. Subdivision (a) incorporates by reference the child support guidelines as a matter for trial decision-making. Subdivision (a) also makes one adjustment in current practice to recognize an issue that frequently recurs in Family Division cases. It states that the Maine Rules of Evidence govern trial proceedings. However, the rule also allows trial courts, if they wish to do so, to require that where expert witnesses are presented, reports of the expert witness be presented in lieu of direct testimony. The expert witness still must be available for cross-examination, questioning by the court, and limited redirect examination to issues brought up on cross-examination and not adequately addressed in the report. The purpose of this provision is to aid courts in better understanding expert presentations by having the expert's written report available to read, rather than being forced to take notes as the expert's report is given through direct examination. This alternative approach, in non-jury cases, improves both the efficiency of the proceeding and the court's understanding of the testimony and reflects an informal practice that is used today in some courts. The amendment requires the parties and the court to address this issue before the hearing.

Subdivision (b) addresses final orders that may be issued by Family Law Magistrates. It is based on FAM DIV III.F. It also recognizes that there is a pilot project permitting Family Law Magistrates to hear contested final hearings with the consent of the parties.

## **RULE 115. NO JUDGMENT WITHOUT HEARING; JUDGMENTS TO BE FINAL**

### **(a) Hearing.**

Unless otherwise provided by these rules, no judgment, other than a dismissal for want of prosecution, shall be entered in an original action under these rules except after hearing, which may be ex parte if a party does not appear. With the permission of the court, a party may appear at a hearing by telephone or by video-conference.

**(b) Finality.** Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, judicial separation, disposition of property, or other disposition, award, or division of property incident to a divorce, annulment, judicial separation or any order relating to paternity, parentage, parental rights and responsibilities including child support, emancipation, and visitation rights of grandparents, other than a temporary or interim order under these rules, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

### **RULE 115 Advisory Notes**

Rule 115 is based on Rule 80(f). Current practice specifically authorized by Rule 80(f) appears more liberal than some of the current provisions of the Family Division rules by allowing appearances and participation by parties who do not file answers and other documents. *See* FAM Div.III.H.1. Hearing rights, without a prior appearance, are addressed in Rule 105(a).

The current practice is to permit parties to appear at hearing by telephone or by video-conference, particularly in uncontested matters. The court has discretion to determine whether the interests of justice are served by permitting a party to appear and testify by telephone or by video-conference in a contested matter.

The rule is amended to list all the actions that may be brought under this chapter. It specifies that no judgment in an original action may be entered without a hearing. Judgments and orders on post-judgment motions may be entered without a hearing when there is an agreement regarding the post-judgment motion or order.

### **RULE 116. DISMISSAL OF ACTIONS**

Rule 41 shall govern practice under this chapter regarding dismissal of actions, except that all dismissals shall be without prejudice unless the court

specifically indicates that a dismissal is with prejudice and precludes further litigation of the same issue. Any new action addressing issues similar to a dismissed action shall be subject to appropriate counterclaims and defenses.

### **RULE 116 Advisory Notes**

Rule 116 incorporates Rule 41 relating to dismissals with a special provision under the Family Division Rules. That provision allows filing of another action to address similar issues subject to appropriate counterclaims and defenses following the dismissal of a prior action that is not a final judgment on the merits. Thus, when a divorce action is filed but dismissed without a final judgment, that dismissal does not preclude a subsequent divorce action from being filed, heard, and decided on the merits. The same non-preclusive effect of a dismissal would apply to other Family Division actions unless the court, in entering the dismissal, specially indicated that the dismissal was with prejudice, precluding further litigation of the same issues.

### **RULE 117. DEFAULT**

Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard before entry of judgment. Notice of hearing is not required prior to entry of a default judgment where the court finds that the party, although properly served with the complaint,

petition or motion for post-judgment relief, has not entered an appearance and/or otherwise participated in proceedings before the judgment.

### **RULE 117 Advisory Notes**

Rule 117 indicates that procedures regarding defaults and default judgments are generally governed by Rule 55. However, Family Division cases do not lend themselves to the clerk entered defaults or default judgments authorized by Rule 55(b)(1). For similar reasons, post-judgment motions under Rule 120 do not lend themselves to a waiver of objections as authorized by Rule 7(c)(3).

The text of Rule 117 also reflects the spirit of Rule 80(f) that parties should have notice of final hearings and the pendency of final judgments in Family Division actions. Thus, the rule requires that no default judgment shall be entered in actions for divorce, child support, spousal support, paternity, parentage or parental rights and responsibilities without all parties being given notice and an opportunity to appear and be heard before entry of judgment. To avoid ambiguity that is often inherent in summons and notices regarding preliminary proceedings in divorce cases where parties who do not contest the ultimate result—the divorce—and thus do not respond indicating such a contest, the summons and notices must be changed to reflect all consequences of not participating in the proceedings.

The proposed rule does allow the court to waive notice to properly served parties who have not entered any appearance and not otherwise participated in the proceedings before the hearing and judgment. The summons must be redrafted to reflect all consequences of a failure to respond or enter an appearance.

### **RULE 118. FINAL ORDERS OF FAMILY LAW MAGISTRATES; JUDICIAL REVIEW**

**(a) Objection and Review.** Any party who wishes to appeal a Family Law Magistrate’s final judgment or order shall file an objection in the District Court within 21 days of the entry of the magistrate’s final judgment or order. If no objection is filed, the parties are deemed to have waived their right to object and to

appeal, and the magistrate's final judgment or order shall become the judgment of the court and have the same effect as any final judgment signed by a District Court judge.

(1) The objection must specifically state the grounds alleged for rejecting or modifying the judgment or order. If a party fails to comply with these requirements, the objection may be dismissed with prejudice. An objection shall not be dismissed solely because it is erroneously captioned as a "motion," "appeal," "notice of appeal" or some other form of pleading.

(2) When an objection is filed, a judge shall review the record established before the magistrate with or without a hearing and may adopt, modify or reject the order, set the matter for further hearing before a judge or magistrate or recommit the matter to the magistrate with instructions.

(3) A magistrate's final order addressing parental rights and responsibilities, residency, and support of minor children or the separate support or personal liberty of a person is effective when signed and remains in effect until modified or rejected by a judge.

(4) Every written final order of a magistrate shall state the parties' right to object to the magistrate's final order and the consequences if the parties fail to object.

**(b) Appeals.** An appeal from a judgment entered after objection to a final judgment or order of a magistrate shall be taken in accordance with the Maine Rules of Appellate Procedure. No appeal may be taken from a final judgment or order of a magistrate as to which no timely objection was filed pursuant to subdivision (a).

**(c) Waiver of Rights.** The parties may waive their right to object and request immediate confirmation of a magistrate's final order. They may also waive their rights to appeal.

#### **RULE 118 Advisory Notes**

Rule 118 incorporates, with only technical amendments, FAM DIV.III.G.2-4 addressing final judgments and orders that may be issued by magistrates and provisions for judicial review and appeal of those final judgments and orders.

#### **RULE 119. REFEREES**

The court may appoint a referee in any case where the parties agree that the case may be heard by a referee, pursuant to Rule 53.

#### **RULE 119 Advisory Notes**

Rule 119 of the Family Division Rules differs slightly from Rule 53 of the Maine Rules of Civil Procedure. Appointment of a referee is allowed only by the agreement of the parties. When a referee is appointed, practice is governed by Rule 53.



## **RULE 120. POST-JUDGMENT RELIEF**

(a) Except as otherwise provided in Title 19-A, any proceedings for modification or enforcement of a final judgment in an action under this chapter shall be on a motion for post-judgment relief. The motion shall be served in accordance with Rule 103. A motion made in response to a motion filed by a party represented by an attorney may be served upon the attorney in accordance with Rule 5.

A motion, any response, and any opposing motion or memorandum shall be accompanied, as appropriate, by the child support affidavits if required by Rule 108.

A motion for contempt may also be brought pursuant to Rule 66. After a hearing on a motion for contempt and a finding of contempt, in addition to other relief, a court may determine that an order amending a judgment or order is necessary to achieve the purposes of the judgment or order that is the subject of the motion for contempt.

Post-judgment motions filed in an action under this chapter must be accompanied by a properly completed Summary Sheet, which is available from the clerk.

(b) The court shall hold a hearing on a motion for post-judgment relief, unless the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary.

(c) Upon motion of a party made within 5 days after notice of a decision under these rules, or upon the court's own motion, the justice or judge who has entered an order on a motion for post-judgment relief shall make findings of fact and conclusions of law in accordance with Rule 52.

### **RULE 120 Advisory Notes**

This rule establishes the procedures for filing post-judgment motions seeking to amend or enforce Family Division orders and judgments that have become final by operation of law. The rule incorporates the provisions of Rule 80(k) but with a qualification noting that enforcement of judgments may also be initiated by a contempt motion pursuant to Rule 66. Service is governed by Rule 103. Responses to motions for post-judgment relief are governed by Rule 105. The filing of a memorandum in support of or opposition to a post-judgment motion is not required.

To avoid multiple appearances by the parties, appearances before two judicial officers for the same issue, and filing of multiple motions, a judge who hears a motion for contempt and finds contempt may consider any orders or amendments of orders necessary to achieve the purposes of the underlying judgment or order. *See* Rule 66(d)(3).

### **RULE 121. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT**

Unless otherwise ordered by the court, an interlocutory or final judgment in an order addressing parental rights and responsibilities, residency and support of minor children or the separate support or personal liberty of a person shall not be

stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

Rule 62 shall govern the practice for a stay of a judgment or enforcement or a judgment.

### **RULE 121 Advisory Notes**

Rule 121 relating to a stay of proceedings to enforce a judgment incorporates Rule 62 by reference.

### **RULE 122. TRANSFER FROM SUPERIOR COURT TO DISTRICT COURT**

Any Family Division action pending in the Superior Court may be transferred to the District Court. Transfer shall be accomplished by filing a notice of transfer agreed to by the parties or their counsel and by paying to the clerk of the Superior Court any required fees. No transfer may be requested during a hearing or while the court has under advisement the merits of the action or any motion after hearing. The action may be transferred to a division of the District Court, located within the county in which either party resided at the commencement of the action. The notice must designate the receiving District Court. After a judgment has become final, the action may be transferred to any division of the District Court. The clerk shall file a copy of the record and all original papers in the action in the District Court in that division. Thereafter the action shall be prosecuted as if all prior proceedings in the action had taken place in the District Court.

## **RULE 122 Advisory Notes**

Rule 122 is similar to Rule 80(1). The court unification legislation authorized all actions for divorce and annulment pending in the Superior Court as original actions on or before December 31, 2000, to continue to be adjudicated in the Superior Court. At the same time, the unification legislation called for opportunity to transfer such actions to the District Court. This rule allows actions for divorce and annulment pending as original matters in the Superior Court to be transferred to the District Court for further processing under the Family Division rules. This transfer can only occur by agreement of the parties. Transfers cannot occur while the Superior Court is hearing or has under advisement the merits of any contested matter before it.

## **RULE 123. APPEALS TO THE LAW COURT**

Appeals to the Law Court from orders and judgments entered in accordance with this chapter, in which there is a right of appeal to the Law Court, shall be governed by the Maine Rules of Appellate Procedure.

Parties may waive their right to appeal on a court approved form.

## **RULE 123 Advisory Notes**

Rule 123 notes that appeals to the Law Court from orders and judgments entered in accordance with the Family Division rules are governed by the Maine Rules of Appellate Procedure. The rule contains the qualification that appeals to the Law Court are only available where there is a right of appeal to the Law Court. Rule 123 in no way expands the existing rights of appeal. For example, interlocutory or interim orders issued in Family Division actions cannot be appealed, except to the extent that appeal of such orders is specifically authorized by statute, by precedent, or by rule of court.

Rule 123 also recognizes the present practice of allowing waiver of rights of appeal, to render judgments final before expiration of the appeal period.

## **RULE 124. REMOVAL TO SUPERIOR COURT**

When the Maine Constitution or the United States Constitution provides a right to a trial by jury in any action or on any issue in an action brought pursuant to this chapter, that action or issue may be removed to the Superior Court for jury trial. When such a removal is authorized, the removal shall be governed by Rule 76C, provided that once the constitutional action or issue is resolved by verdict of the jury, the matter shall be remanded to the District Court for such further proceedings as are authorized or required by this chapter.

### **RULE 124 Advisory Notes**

As a result of court unification, the District Court has exclusive jurisdiction of Family Division actions. Cases in categories such as divorce, separate support, and paternity may no longer be removed, as a matter of right, to the Superior Court. The rule does not, however, impose an absolute prohibition on removal. It leaves the possibility of removal, but only in those cases where there may be a right to jury trial of all or a portion of a Family Division action. The rule also provides that once the matter as to which there is a constitutional jury trial right is resolved by verdict of the jury, the matter is to be remanded to the District Court for further proceedings as authorized by these rules. *See* Rule 100.

## **RULE 125. EFFECTIVE DATE**

The rules in Chapter XIII are effective January 1, 2009. They shall govern all proceedings in Family Division actions brought on and after January 1, 2009 and all further proceedings in actions then pending.

### **RULE 125 Advisory Notes**

