

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE

2009 Me. Rules 10

Effective: July 1, 2009

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are hereby adopted to be effective on the date indicated above. The specific rules amendments appear below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 1 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 1. SCOPE OF RULES

These rules govern the procedure in the District Court, in the Superior Court, and before a single justice of the Supreme Judicial Court in all suits of a civil nature whether cognizable as cases at law or in equity, including appeals from a governmental agency, with the limitations stated in Rule 81. ~~These rules also govern the procedure in the Supreme Judicial Court when sitting as the Law Court.~~ They shall be construed to secure the just, speedy and inexpensive determination of every action.

Advisory Note

The amendment to Rule 1 removes a sentence addressing appeals that existed in the Rule before adoption of the Maine Rules of Appellate Procedure. The Maine Rules of Appellate Procedure now govern procedure in the Supreme Judicial Court sitting as the Law Court in both civil and criminal cases. Continuance of this sentence in the Civil Rules has occasionally created confusion, particularly regarding applicability of M.R. Civ. P. 6(c) that extends prescribed response time limits by three days when service of a document requiring a response is made by mail. A similar provision is not incorporated in the rules

governing appeals. Rule 15 of the Maine Rules of Appellate Procedure incorporates Rule 6(a) but not Rule 6(c) of the Maine Rules of Civil Procedure.

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

(f) Service by Mail in Certain Actions.

(1) Outside State. Where service cannot, with due diligence, be made personally within the state, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases: where the pleading demands a judgment that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state, or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to any property.

(2) ~~Divorce Cases~~ Family Division Actions. Service of the summons and complaint or a post-judgment motion may be made in an action 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.

(3) Service Completion. Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary mail.

Advisory Note

The amendment to Rule 4(f) changes only the heading of paragraph 2 to recognize the Rule's applicability to Family Division Actions under Chapter XIII.

3. Rule 110A(b)(4)(B) of the Maine Rules of Civil Procedure is amended to read as follows:

(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. Mediation pursuant to Rule 92(b) may be waived when the parties agree to proceed with and pay for private mediation in place of mediation pursuant to Rule 92. An agreement reached through mediation shall be reviewed by the court. If approved, it may be entered as either an interim or final order.

Advisory Note

This amendment is added to Rule 110A(b)(4)(B) to recognize past and current practice that parties to domestic relations actions requiring mediation may, by agreement, arrange and pay for private mediation in place of mediation provided pursuant to Rule 92.

4. Rule 120(b) of the Maine Rules of Civil Procedure is amended to read as follows:

(b) The court shall hold a hearing on a motion for post-judgment relief, unless (i) the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary, or (ii) there is no timely request for a hearing on a motion to modify child support and entry of an order without hearing is authorized by 19-A M.R.S. § 2009(6).

Advisory Note

This amendment clarifies that post-judgment motions to modify child support may be acted on without hearing when there is no request for a hearing filed within 30 days pursuant to M.R. Civ. P. 105(a) and other conditions of 19-A M.R.S. § 2009(6) requiring that such “without hearing” orders include a child support obligation equal to or greater than specified in the child support guidelines are met. The terms of 19-A M.R.S. § 2009(6) in effect at the time of this rule change state that:

6. Order without hearing. If a party does not request a hearing within 30 days after service, the court may enter an order modifying support without hearing using the proposed order, as long as the proposed modified support obligation is equal to or greater than the obligation resulting from the application of section 2005. If a downward deviation is proposed, the court shall hold a hearing prior

to entering an order. The court may apply the presumptions set out in section 2004, subsection 1, paragraph D.

5. These amendments shall be effective July 1, 2009.

Dated: May 11, 2009

/s/
LEIGH I. SAUFLEY
Chief Justice

/s/
ROBERT W. CLIFFORD
Associate Justice

/s/
DONALD G. ALEXANDER
Associate Justice

/s/
JON D. LEVY
Associate Justice

/s/
WARREN M. SILVER
Associate Justice

/s/
ANDREW M. MEAD
Associate Justice

/s/
ELLEN A. GORMAN
Associate Justice