

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO MAINE RULES OF CRIMINAL PROCEDURE

2010 Me. Rules 5

Effective: March 31, 2010

All the justices concurring therein, the following amendments to the Maine Rules of Criminal Procedure are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated 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 each amendment, but it is not part of the amendment adopted by the Court.

1. Rule 11B, subdivision (a), of the Maine Rules of Criminal Procedure is amended as follows:

(a) **In General.** The attorney for the state and the defendant may enter into a written filing agreement respecting a pending indictment, information or complaint. The filing agreement must establish a definite filing period of up to one year subject to the conditions, if any, set forth in the filing agreement. Upon execution of the agreement by the parties, the state shall file the agreement forthwith in the trial court and, upon such filing, the agreement will become effective.

Advisory Note – March 2010

M.R. Crim. P. 11B(a). The amendment adds a new final sentence that both imposes upon the state the obligation to file the written agreement forthwith once executed and signifies when the executed agreement becomes effective—that is, when it is filed by the state in the trial court and not before.

2. Rule 24, subdivision (c), paragraphs (2) and (3) of the Maine Rules of Criminal Procedure are amended as follows:

2 *Order of Exercise.* Peremptory challenges shall be exercised one by one, ~~alternatively~~ alternately, with the state exercising the first challenge. If there ~~are two or more defendants, is more than one defendant~~ the court may allow the defendants additional peremptory challenges as specified in paragraph (3), the

court may permit the additional challenges to be exercised separately or jointly, and determine the order of the challenges.

3. *Number.* If the crime charged is ~~murder~~punishable by life imprisonment, each side is entitled to 10 peremptory challenges. If the crime charged is a Class A crime not punishable by life imprisonment, a Class B crime, or a Class C crime, each side is entitled to 8 peremptory challenges. In all other criminal prosecutions each side is entitled to 4 peremptory challenges. If there are two or more defendants, the court may allow each side additional peremptory challenges.

Advisory Notes – March 2010

M.R. Crim. P. 24(c)(2) and (3). The amendment modifies paragraph (2) of subdivision (c) in two respects. In the first sentence the word “alternatively” is replaced by the word “alternately.” In the second sentence, that portion addressing the court’s authority to allow additional peremptory challenges in the event of multiple defendants has been moved to paragraph (3) as a new final sentence since paragraph (3) addresses the number of peremptory challenges authorized. That portion of the second sentence addressing exercise of additional peremptory challenges provided to multiple defendants is retained in paragraph (2) with new introductory language. As in current practice, when the court exercises its authority to increase the number of peremptory challenges, an equal increase is given to each side. *See, Alexander, Maine Jury Instruction Manual*, § 2-13 (4th ed. 2009).

The amendment further modifies paragraph (3) of subsection (c) in two respects. In the first sentence the reference to “murder” is replaced by “punishable by life imprisonment” since the crime of aggravated attempted murder, 17-A M.R.S. § 152-A, added to the Maine Criminal Code by P.L. 2001, ch. 413, § 2, is also potentially punishable by life imprisonment. Historically, entitlement by each side to the maximum number peremptory challenges authorized by Rule 24 for any crime has been predicated upon the crime charged carrying the potential of life imprisonment as a punishment. *See generally*, 1 Cluchey & Seitzinger, *Maine Criminal Practice*, § 24.4, n. 41 at V-57 (Gardner ed. 1995); Me. Rptr. 344-351 A.2d XLIII-XLIV and LIV-LV; and Me. Rptr. 376-380 A.2d XXXII and XXXVIII. The second sentence, in addition to formalistic changes to enhance clarity, adds the limitation “not punishable by life imprisonment” because aggravated attempted murder is a Class A crime. 17-A M.R.S. § 152-A(2).

3. Rule 48, subdivision (b) of the Maine Rules of Criminal Procedure is amended as follows:

(b) By the Court.

(1) If there is unnecessary delay in bringing a defendant to trial, the court may upon motion of the defendant or on the court's own motion dismiss the indictment, information or complaint. The court shall direct whether the dismissal is with or without prejudice.

(2) If no indictment has been returned by the grand jury within 6 months of the initial appearance of the defendant or after the 3rd regularly scheduled session of the grand jury after the initial appearance, whichever occurs first, the clerk shall enter a dismissal of the complaint, unless within the time period specified in this paragraph the attorney for the state moves to enlarge the period and shows the court good cause why the complaint should remain on the docket. The dismissal pursuant to this paragraph shall be without prejudice.

Advisory Note – March 2010

M.R. Crim. P. 48(b) heading, (1) and (2). The amendment modifies subdivision (b) in three respects. First, the heading is changed from “By Court” to “By the Court.” Second, paragraph (1) of subdivision (b) is expanded to allow a trial court on its own motion to dismiss a charging instrument “[i]f there is unnecessary delay in bringing a defendant to trial.” Prior to this change, paragraph (1) permitted a dismissal only upon motion of the defendant. Paragraph (1) is designed to be the mechanism to enforce a defendant’s speedy trial right as provided by Me. Const. art. I, § 6 and U.S. Const., amend. VI and XIV. *State v. Caulk*, 543 A.2d 1366, 1369-70 (Me. 1988). Third, paragraph (2) of subdivision (b) is amended to clarify that to avoid dismissal of the complaint by the clerk, the attorney for the state must, prior to the expiration of the time period specified in paragraph (2), both move to enlarge the period and show the trial court good cause why the complaint should remain on the docket.

4. Rule 95, subdivision (b) of the Maine Rules of Criminal Procedure is amended as follows:

(b) Docketing and Assignment ~~on postconviction motion for DNA analysis~~ A post-conviction motion for DNA analysis pursuant to 15 M.R.S.A. ch.

305-B shall be docketed by the clerk in the underlying criminal proceeding. The motion shall be assigned as provided ~~under~~ pursuant to 15 M.R.S.A. § 2138(1).

Advisory Note – March 2010

M.R. Crim. P. 95(b). The amendment corrects typographical and syntactical errors and recognizes current usage of M.R.S. as the Court’s primary reference.

5. Rule 96, subdivision (a) of the Maine Rules of Criminal Procedure is amended as follows:

(a) Compliance with 15 M.R.S.A. § 2138(3). Following the filing of a motion for DNA analysis, if the court finds the person to be indigent, the court may appoint counsel any time during the ~~proceeding~~ proceedings.

Advisory Note – March 2010

M.R. Crim. P. 96(a). The amendment, in addition to one formalistic change, makes two changes to reflect more correctly the substance of 15 M.R.S. § 2138(3). First, it adds the statutory precondition to the appointment of counsel that the court first make a specific finding of indigency relative to the person filing the motion. Second, it replaces the word “proceeding” with “proceedings” since 15 M.R.S. ch. 305-B provides for more than one proceeding.

6. Part XIII of the Maine Rules of Criminal procedure is added to read as follows:

XIII. POST-JUDGMENT MOTION AND HEARING FOR DETERMINATION OF FACTUAL INNOCENCE AND CORRECTION OF RECORD BASED ON A PERSON’S IDENTITY HAVING BEEN STOLEN AND FALSELY USED IN A CRIMINAL PROCEEDING; SUBSEQUENT DISCOVERY OF FRAUD OR MISREPRESENTATION

Rule 105. INITIATION OF PROCEEDINGS

(a) Person or Entity Entitled to File a Post-Judgment Motion. Any person who satisfies the prerequisites of 15 M.R.S. §§ 2181 and 2182 may file a

post-judgment motion in the underlying criminal proceeding for determination of factual innocence and correction of the court records and related criminal justice agency records. The attorney for the state or a court may file the motion on behalf of a qualifying person. Filing must be in accordance with Rule 49(d) and (e).

(b) Docketing and Assignment of Post-Judgment Motion. The post-judgment motion shall be docketed by the clerk in the underlying criminal proceeding as contemplated by 15 M.R.S. §§ 2182(1) and 2183(1). The motion shall be assigned as provided under 15 M.R.S. § 2183(1).

(c) Service of the Post-Judgment Motion. Pursuant to 15 M.R.S. § 2183(1), the specially assigned judge or justice shall determine upon whom and how service of the post-judgment motion is to be made and enter an order in this regard.

RULE 106. ASSIGNMENT OF COUNSEL

(a) Compliance with 15 M.R.S. § 2183(2). Following the filing of a post-judgment motion, if the court finds the person to be indigent, the court may appoint counsel at any time during the proceedings.

(b) Determination of Indigency; Appointment and Compensation; Continuing Duty to Represent. The determination of indigency, the appointment of and compensation of counsel, and the continuing duty of counsel to represent the person shall be governed by the provisions of Rules 44, 44A and 44B.

RULE 107. REPRESENTATION OF THE STATE

Representation of the state in these proceedings shall be as provided in 15 M.R.S. § 2183(3).

RULE 108. HEARING; CERTIFICATION OF RESULTS; CORRECTION OF THE RECORD

At the conclusion of the hearing held pursuant to 15 M.R.S. § 2183(5), the court shall issue a written order certifying its determination. The order must contain written findings of fact supporting the court's decision granting or denying the motion and a copy thereof shall be provided to the person, all as required pursuant to 15 M.R.S. § 2183(5). If the court grants the motion, the court shall issue an additional order specifying the corrections to be made in the court records

and the records of each of the appropriate criminal justice agencies, as provided in 15 M.R.S. § 2183(6).

RULE 109. SUBSEQUENT DISCOVERY OF FRAUD OR MISREPRESENTATION

If, subsequent to the granting of the motion, the court holds a hearing to determine fraud or misrepresentation under 15 M.R.S. § 2183(7), the court may, if it finds the existence of material misrepresentation or fraud, issue an order vacating its earlier order certifying a determination of factual innocence and modify accordingly any earlier ordered record correction, as provided under 15 M.R.S. § 2143(7).

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M.R. Crim. P. Part XIII and Rules 105-109. Rules 105 – 109 address the new statutory post-judgment relief mechanism for persons whose identities have been stolen and falsely used by another person in a criminal proceeding. *See* 15 M.R.S. §§ 2181-2184, enacted by P.L. 2009, ch. 287, § 1, effective September 12, 2009. For a thorough explanation of this new relief mechanism, *see* L.D. 1179, Summary (124th Legis. 2009). In essence, the new law provides a basis for relief when a person, claiming another person’s identity, has been convicted of a crime or civil infraction, and the person seeking relief had no knowledge that his or her identity was used by the convicted person. The new law is not a new post conviction remedy for persons who have appeared in court and been convicted after trial or plea and later seek to assert defects in the process that led to their identification or claim that an alternative suspect should have been pursued. The statutory amendments authorize post-judgment relief in a criminal proceeding or a civil violation or traffic infraction proceeding. Rules 105-109 address this post-judgment relief mechanism in the context of a criminal proceeding. Rule 60(b) of the Maine Rules of Civil Procedure provides general guidance in the context of a civil violation or traffic infraction proceeding.

7. These amendments shall be effective March 31, 2010.

Dated: March 10, 2010

FOR THE COURT¹

/S/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.