STATE OF MAINE
SUPREME JUDICIAL COURT
ADOPTION OF
MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

2014 Me. Rules 16

Effective: Dates specified in M.R.U. Crim. P. 1(e)

All of the Justices concurring therein, the Maine Rules of Unified Criminal Procedure are adopted to be effective on the date indicated above. To aid in understanding of each Rule, a Committee Advisory Note appears after the text of the Rule. The Committee Advisory Note states the reason for recommending the Rule and any distinction between the Rule and the analogous provision of the Maine Rules of Criminal Procedure that the Rule replaces, but the Committee Advisory Note is not part of the new Rule adopted by the Court.

MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

I. SCOPE, PURPOSE, AND CONSTRUCTION

RULE 1. TITLE, SCOPE, AND APPLICATION OF RULES

(a) Title. These Rules may be known and cited as the Maine Rules of Unified Criminal Procedure.

(b) Scope; Application. These Rules are effective upon the date stated in subdivision (e) below for each county or region. They govern the procedure in the proceedings specified below brought in any county or region with a Unified Criminal Docket after unification takes effect, and also proceedings specified below then pending, except to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work an injustice, in which event the Maine Rules of Criminal Procedure apply:

(1) In all criminal proceedings, including appellate and post-conviction review proceedings, extradition proceedings, proceedings on a post-conviction motion for DNA analysis, and proceedings on a post-judgment motion by a person whose identity allegedly has been stolen and falsely used; and

(2) In proceedings before justices of the peace and bail commissioners; and

(3) In juvenile crime proceedings (including appellate proceedings) to the extent consistent with the Maine Juvenile Code.

These Rules are not applicable to forfeiture of property for a violation of a statute of the State of Maine or the collection of fines and penalties. These Rules are not applicable to revocation proceedings under Title 17-A, sections 1205 through 1207, section 1233 or sections 1349-D through 1349-F except to the extent and under the conditions stated in those sections. These Rules are not applicable to proceedings for administrative inspection warrants, traffic infractions, actions for license revocation or suspension, and land use violations addressed in Rules 80E, 80F, 80G, and 80K of the Maine Rules of Civil Procedure, except as those civil rules may reference or incorporate provisions of these Rules. Rules 110 and 111 of these Rules supersede Rules 80H and 80I, respectively, of the Maine Rules of Civil Procedure.

(c) Procedure When None Specified. When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the United States or of the State of Maine, the Maine Rules of Criminal Procedure, these Rules, or any applicable statutes.

(d) Forms. Forms do not accompany these Rules. Forms are currently prepared by the Judicial Branch Forms Committee and, to a limited extent, by the Supreme Judicial Court. Forms are intended to be both sufficient under the Rules and reflective of the simplicity and brevity of statement that the Rules contemplate. Forms are available through the court clerks' offices and, to an increasing extent, on the Judicial Branch website.

(e) Effective Date of These Rules. The Maine Rules of Unified Criminal Procedure shall take effect to govern proceedings indicated in subdivision (b) on the dates indicated below for each county, and on the effective date for these Rules in each county, the Maine Rules of Criminal Procedure and/or prior Administrative Orders governing Unified Criminal Docket proceedings in any particular county shall cease to apply to govern proceedings in that county. Decisions made, actions taken, orders issued, and judgments entered pursuant to the Maine Rules of Criminal Procedure or prior Unified Criminal Docket rules shall continue to be valid and have full force and effect.

(1) These Rules shall take effect on January 1, 2015, in Cumberland County, Franklin County, Hancock County, Penobscot County, Piscataquis County, Sagadahoc County, and Somerset County.

(2) These Rules shall take effect on April 1, 2015, in Kennebec County, Knox County, Lincoln County, Oxford County, and Waldo County.

(3) These Rules shall take effect on July 1, 2015, in Androscoggin County, Aroostook County, Washington County, and York County.

(f) Effective Date of Amendments. Amendments to these Rules will take effect upon the day specified in the order adopting them. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work injustice, in which event the former procedure applies.

Committee Advisory Note

The Rule parallels the content of Rule 1 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the heading to Rule 1 is changed from "**TITLE AND SCOPE OF RULES" to "TITLE, SCOPE, AND APPLICATION OF RULES**" in order to signal that these new unified Rules will be phased in rather than governing the procedure in all existing courts from the outset.

Second, in subdivision (a) the title given to these new Rules is the "Maine Rules of Unified Criminal Procedure." The word "Unified" in the title is expressly intended to convey that the distinctions between the functions of the District and Superior Courts in their handling of criminal matters and civil violations have been eliminated.

Third, in subdivision (b) the heading is changed from "**Scope**" to "**Scope; Application**."

Fourth, in subdivision (b), as it relates to "scope," the content remains the same as Rule 1(b) of the Maine Rules of Criminal Procedure except that the

sentence "These rules govern the procedure in the Superior Court and the District Court" is intentionally omitted.

Fifth, in subdivision (b), as it relates to "application," the content makes clear that the new Maine Rules of Unified Criminal Procedure and the Maine Rules of Criminal Procedure will coexist for a period. During this transitional period the new Rules of Unified Criminal Procedure will be applied in all counties or regions with a Unified Criminal Docket while the preexisting Maine Rules of Criminal Procedure will continue to apply elsewhere until unification takes effect. When unification has been fully accomplished statewide, the Maine Rules of Criminal Procedure will be abrogated. In addition, the content makes clear that, when the new Rules first become effective in a given county or region, then-pending proceedings within their scope are subject to the new Rules except (like any future amendments pursuant to subdivision (f)) "to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work an injustice." Further, subdivision (b) makes clear that the new Rules "are effective upon the date set forth in the order adopting them." Finally, in the final paragraph of subdivision (b) the references to "civil violations, search warrants for schedule Z drugs" and "80H, 80I" are omitted and a new sentence is added that makes clear that new Rules 110 and 111 supersede Rules 80H and 80I in any county or region with a Unified Criminal Docket.

Sixth, in subdivision (d) the words "no longer" are replaced by the words "do not" because these Rules, unlike the Maine Rules of Criminal Procedure, have no former history of form use.

Seventh, subdivisions (e) and (f) address the effective dates for these Rules and amendments to these Rules.

RULE 2. PURPOSE AND CONSTRUCTION

These Rules are intended to provide for the just determination of every proceeding governed by them. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Committee Advisory Note

The Rule parallels the content of Rule 2 of the Maine Rules of Criminal Procedure but clarifies that the new Rules apply to "every proceeding governed by them," not solely criminal proceedings.

II. PRELIMINARY PROCEEDINGS

RULE 3. THE COMPLAINT

(a) Nature and Contents. The complaint shall be a plain, concise, and definite written statement of the essential facts constituting the crime charged. The complaint is not required to negate any facts designated a "defense" or any exception, exclusion, or authorization set forth in the statute defining the crime. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the crime are unknown or that the defendant committed it by one or more specified means. The complaint shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law, the class of crime that the defendant is alleged therein to have violated and the municipality or other location where the crime is alleged to have occurred. Error in the citation of a statute or its omission shall not be grounds for the dismissal of the complaint or for reversal of a conviction if the error or omission was not prejudicially misleading.

All charges against a defendant arising from the same incident or course of conduct should be alleged in one complaint, except that special circumstances may require the use of separate instruments. A complaint may include multiple counts charged against a defendant when authorized pursuant to Rule 8(a). Nothing in this Rule shall prohibit the later commencement of additional charges arising from the original incident or course of conduct. The court may administratively consolidate such subsequent charges with the original complaint into a single case docket. Two or more defendants may not be charged in the same complaint.

If a prior conviction must be specially alleged pursuant to 17-A M.R.S. § 9-A(1) it may not be alleged in an ancillary complaint or separate count but instead must be part of the allegations constituting the principal crime. A prior conviction allegation made in one count may be incorporated by reference in another count.

(b) How Made. The complaint shall be made upon oath before the court or other officer empowered to issue warrants against persons charged with crimes against the State. If a charge is enhanced to a Class C crime or above because of prior convictions, the complaint shall allege the prior convictions to charge the enhanced crime.

"Oath" includes affirmations as provided by law.

(c) Surplusage. The court on motion of the defendant may strike surplusage from the complaint.

(d) Amendment of Complaint. The attorney for the State may amend a complaint as a matter of right at any time before completion of the defendant's initial appearance pursuant to Rule 5 of these Rules.

The court may permit a complaint to be amended at any time before verdict or finding if no additional or different crime is charged and if substantial rights of the defendant are not prejudiced.

Unless the statutory class for the principal crime would be elevated thereby, amendment of a complaint for purposes of 17-A M.R.S. § 9-A(1) may be made as of right by the attorney for the State at any time before the imposition of sentence on the principal crime.

With respect to joint recommendations for disposition involving an amendment to the complaint, the motion to amend the complaint must be in writing, must be accompanied by the proposed amended complaint, and must be filed with the clerk for docketing before it is presented to the court for disposition.

(e) Arrest Tracking Number (ATN) and Charge Tracking Number (CTN). Unless the crime charged is an excepted crime under Rule 57, each count of the complaint should include the assigned Arrest Tracking Number and Charge Tracking Number.

(f) State Identification Number. If a State Identification Number has been assigned to a defendant by the State Bureau of Identification, and if that State Identification Number is known to the attorney for the State, the complaint shall contain that number.

(g) Statute Sequence Number. Each count of the complaint shall set forth the Statute Sequence Number for the crime or crime variant charged.

Committee Advisory Note

The Rule parallels the content of Rule 3 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the word "that" replaces the word "which" to reflect modern usage.

Second, in subdivisions (b) and (d) the word "court" replaces the words "a Superior Court justice or a District Court judge" because the word "court" is now expressly defined in Rule 57(d) to mean both a Superior Court justice and a District Court judge "unless the context clearly indicates only one or the other." See Committee Advisory Note to M.R.U. Crim. P. 57(d).

Third, in subdivision (d) and (f) the letter "s" in the word "state" when appearing in the term "attorney for the State" is capitalized because the word "state" in this context refers to a government actor.

Fourth, in subdivision (d) the word "before" replaces the phrase "prior to" to reflect modern usage.

Fifth, a new subdivision (g) is added requiring that each count of the complaint identify the Statute Sequence Number assigned by the Maine Judicial Information System (MEJIS) to each crime or crime variant. The term "Statute Sequence Number" is defined in Rule 57(h). See also Committee Advisory Note to M.R.U. Crim. P. 57(h).

RULE 4. ARREST WARRANT OR SUMMONS

(a) Definitions. For purposes of this Rule the following definitions apply:

(1) "Clerk" means a clerk or deputy clerk of the Unified Criminal Docket.

(2) "Electronic Arrest Warrant" means an arrest warrant, including a bench warrant, issued pursuant to statute and this Rule that exists in electronic form and is entered into, maintained, managed, enforced, executed or recalled under the statewide warrant management system pursuant to 15 M.R.S. § 653 and this Rule.

(3) "Paper Arrest Warrant" means an arrest warrant issued pursuant to statute and this Rule that exists in paper form rather than in electronic form because it is excluded from the statewide warrant management system pursuant to 15 M.R.S. § 652, or because it is not yet in electronic form due to it being issued by a justice of the peace, issued by any judicial officer outside of the business hours of the court, or due to the temporary unavailability of the statewide warrant management system or other exigent circumstance pursuant to 15 M.R.S. § 654(1).

(b) Grounds for Issuance of Arrest Warrant or Summons.

(1) *Indictment.* An indictment is grounds for issuance of an arrest warrant or summons for the defendant named in the indictment.

(2) *Probable Cause.* Probable cause to believe that a crime has been committed and that the defendant committed it is grounds for an arrest warrant or summons for the defendant. Probable cause shall appear from the information or complaint or from an affidavit or affidavits sworn to before the court or other officer empowered to issue process against persons charged with crimes against the State and filed with the information or complaint.

(3) *Bench Warrant.* A bench warrant may issue for a failure to appear or for contempt or as provided by statute.

(c) Who May Issue Arrest Warrant or Summons.

(1) *Indictment*. A clerk shall issue an arrest warrant or summons for the defendant named in the indictment when so directed by the court or so requested by the attorney for the State.

(2) *Probable Cause.* The court or, when duly authorized to do so, a justice of the peace or clerk may issue an arrest warrant or summons based on probable cause, as determined pursuant to subdivision (b)(2).

(3) *Bench Warrant.* The court may authorize the issuance of a bench warrant physically or electronically. A clerk shall authorize the issuance of a bench warrant physically or electronically when so directed by the court, except in cases of contempt.

(d) Content of Arrest Warrant or Summons.

(1) *Warrant*. The arrest warrant shall bear the caption of the court or division of the court from which it issues. It shall contain an electronic signature of the court, or clerk issuing the arrest warrant electronically, or contain a physical signature by the court or other person authorized to issue arrest warrants in the event the arrest warrant issued is a paper warrant. It shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The arrest warrant shall contain available information concerning the identity and location of the defendant, including, but not limited to, photographs of the defendant, the defendant's last known address identified by town, county and geographic codes, the defendant's date of birth, and any distinguishing physical characteristics that will aid in the location of the defendant and the execution of the warrant. It shall describe the crime charged and indicate when applicable that it is a crime involving domestic violence. It shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and physically or electronically endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the arrest warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(e) Management of Electronic or Paper Arrest Warrant.

(1) *Electronic Arrest Warrant and Recall Order*. Electronic arrest warrants, and all orders recalling electronic arrest warrants, shall be entered into, stored, and retained in the electronic warrant docket management system as provided in 15 M.R.S. § 653(1). The electronic warrant docket management system shall be the sole official record of electronic arrest warrants issued and recalled pursuant to this Rule.

(2) *Mandatory Filing and Entering Electronically of the Original of Certain Paper Arrest Warrants*. Unless the paper arrest warrant has already been executed or recalled, the original of the following paper arrest warrants must be filed and entered electronically into the warrant document management system as follows:

(A) Any paper arrest warrant issued by a justice of the peace or issued by any judicial officer outside of the regular business hours of a court must be

filed on the next regular business day and entered electronically by the court as soon as possible thereafter. The filing must be made with the court that would have jurisdiction and venue over a criminal action resulting from the warrant. The original of any paper arrest warrant filed with the court shall remain with the court.

(B) Any paper arrest warrant issued due to the temporary unavailability of the statewide warrant management system or other exigent circumstances must be filed on the next regular business day and entered electronically by the court as soon as possible thereafter. The filing must be made with the court that would have jurisdiction and venue over a criminal action resulting from the warrant. The original of any paper arrest warrant filed with the court shall remain with the court.

Once a paper arrest warrant described in paragraph (A) and (B) is entered electronically into the warrant docket management system, the resulting electronic arrest warrant becomes the sole official arrest warrant.

(3) *Filing of Paper Arrest Warrants Excluded from the Electronic Warrant Docket Management System*. Any paper warrants specifically excluded from the electronic warrant docket management system pursuant to 15 M.R.S. § 652 shall continue to be filed as follows:

(A) The original shall be filed with the court that would have jurisdiction and venue over a criminal action resulting from the warrant; and

(B) An attested copy shall be filed with the appropriate arrest warrant repository or the investigating agency, as provided by former 15 M.R.S. ch. 99 and the former standards issued pursuant to that chapter.

(f) Execution of Electronic or Paper Arrest Warrant or Service of Summons.

(1) *By Whom*. The electronic arrest warrant or paper arrest warrant shall be executed by any officer authorized by law. The summons may be served by any constable, police officer, sheriff, deputy sheriff, marine patrol officer of the Department of Marine Resources, warden of the Department of Inland Fisheries and Wildlife, or any person authorized to serve a summons in a civil action.

(2) *Territorial Limits*. The warrant may be executed or the summons may be served at any place within the State of Maine.

(3) *Manner of Execution of Electronic or Paper Arrest Warrant*. The electronic arrest warrant or paper arrest warrant shall be executed by the arrest of the defendant. If execution is of an electronic arrest warrant, showing the warrant to the defendant is not possible. If execution is of a paper arrest warrant, the officer need not have the warrant in the officer's possession at the time of the arrest but, upon request, the officer shall show the warrant to the defendant as soon as possible. If the officer is executing an electronic arrest warrant or if the officer does not have the paper arrest warrant in his or her possession at the time of the arrest, he or she shall inform the defendant of the crime charged and of the fact that an arrest warrant has been issued. The officer executing the electronic arrest warrant or paper arrest warrant shall bring the arrested defendant promptly before the court. If the arrest is made at a place 100 miles or more from the court designated in the warrant, the defendant arrested, if bail has not been previously set or denied by the court, shall be taken before the nearest available court or, if authorized to set bail for the crime charged pursuant to Maine Bail Code, before the nearest available bail commissioner.

(4) *Service of Summons.* The clerk shall mail a summons to the defendant's last known address or shall deliver it to any officer authorized by law to execute or serve it or to the attorney for the State, unless the defendant is in custody or otherwise before the court. More than one summons may issue for a defendant. Personal service is effected by delivering a copy to the defendant personally or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. A summons to a corporation shall be served in the same manner as a summons to a corporation is served in a civil case.

(5) *Failure of Service or Failure to Appear in Response to Summons.* If a mailed summons is returned undelivered or if a defendant cannot be personally served or if a defendant fails to appear in response to a summons, the clerk shall request the court to authorize a bench warrant.

(g) Return of Electronic or Paper Arrest Warrant or Summons.

(1) *Warrant*. The officer executing an electronic arrest warrant shall make a return of the warrant as provided by 15 M.R.S. ch. 100 and the standards issued pursuant to that chapter. The officer executing a paper arrest warrant shall make

a return of the warrant as provided by former 15 M.R.S. ch. 99 and the former standards issued pursuant to that chapter.

(2) *Summons.* On or before the return day, the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the State made at any time while the charge is pending, a summons returned unserved or a duplicate thereof may be delivered by the clerk to any authorized person for service.

Committee Advisory Note

The Rule parallels the content of Rule 4 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a)(1) the word "clerk" is defined to mean a clerk or deputy clerk "of the Unified Criminal Docket" rather than "of the District Court or Superior Court."

Second, in subdivision (b)(2), (c)(2), (3) and (d) the word "court" replaces the words "a Supreme Court Justice, a District court Judge" or its variant "a justice [or] judge." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d).

Third, in subdivision (c)(1), (f)(4) and (g)(2) the letter "s" in the word "state" is capitalized because it is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Fourth, in the heading of subdivision (e) the word "**Issued**" is deleted as unnecessary.

Fifth, in subdivision (e)(1) the former references to the "Judicial Branch warrant docket management system" and the "warrant docket management system" have been modified to each read "electronic warrant docket management system" for purposes of consistency within the Rule and clarity.

Sixth, in subdivision (f)(3) the word "defendant" replaces the word "person" for purposes of consistency within the paragraph.

Seventh, in subdivision (f)(3) procedure is added in the event the arrest is made at a place 100 miles or more from the court designated in the warrant. In such a circumstance, unless bail has previously been set or denied, the arrested

defendant must be taken either before the nearest available court, or, unless not authorized to set bail for the crime because of 15 M.R.S. §§ 1023(4) and 1092(4), before the nearest available bail commissioner.

RULE 4A. PROBABLE CAUSE DETERMINATION UPON WARRANTLESS ARREST FOR ANY CRIME

(a) Timing: Required Findings. Except in a bona fide emergency or other extraordinary circumstance, when a defendant arrested without a warrant for any crime is not released from custody within 48 hours after arrest, including Saturdays, Sundays, and legal holidays, the court or justice of the peace shall determine, within that time period, whether there is probable cause to believe that a crime has been committed and that the arrested defendant has committed it. If the evidence does not establish such probable cause, the court or justice of the peace shall discharge the arrested defendant. If a probable cause determination has not taken place within 36 hours after the arrest, including Saturdays, Sundays, and legal holidays, the custodian shall notify the attorney for the State of the upcoming deadline. For purposes of this Rule "custody" means incarceration. Rule 45(a) and (b) have no application to this subdivision.

(b) Evidence. In making this determination the court or justice of the peace shall consider:

(1) the sworn complaint;

(2) an affidavit or affidavits, if any, filed by the State;

(3) a sworn oral statement or statements, if any, made before the court or justice of the peace that is reduced to writing or electronically recorded by equipment that is capable of providing a record adequate for purposes of review. The court or justice of the peace may administer the oath and receive an oral statement by telephone.

(c) Record. A finding that probable cause does or does not exist shall be endorsed on the complaint or other appropriate document and filed together with the sworn complaint, affidavit(s), or other written or recorded record with the clerk of the Unified Criminal Docket having jurisdiction of the crime for which the arrested defendant is charged.

Committee Advisory Note

The Rule parallels the content of Rule 4A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) and (b) the word "court" replaces the words "a Superior Court justice, a District Court judge." See Committee Advisory Note to M.R.U. Crim. P. 57(d).

Second, in subdivision (a) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Third, in subdivision (b) the letter "s" in the word "state" is capitalized because it is referring to the "State" as a party.

Fourth, in subdivisions (a) and (c) the word "defendant" replaces the word "person" to make the Rule internally consistent and with the other new Rules. See e.g., Rules 4 and 5.

Fifth, in subdivision (b)(3) the word "that" replaces the word "which" to reflect modern usage.

Sixth, in subdivision (c) the words "Unified Criminal Docket" are added after the word "the" and before the word "having" for purposes of clarity.

RULE 5. INITIAL PROCEEDINGS IN THE UNIFIED CRIMINAL DOCKET

(a) Initial Appearance Before the Court. A defendant arrested for any crime, either under a warrant issued upon an indictment or upon an information or complaint filed in the Unified Criminal Docket or without a warrant, who is not sooner released, shall be brought before the court without unnecessary delay and in no event later than 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays. Such appearance may be by audiovisual device in the discretion of the court. If such appearance has not taken place within 36 hours after the arrest, the custodian shall notify the attorney for the State of the upcoming deadline. If such appearance has not taken place within 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays, the

custodian shall release the defendant from custody or bring the defendant forthwith before the court for such appearance.

(1) *Defendants Arrested Under a Warrant.* Defendants arrested under a warrant issued upon an indictment, an information, or a complaint filed in the Unified Criminal Docket shall be taken before the court. If the arrest is made at a place 100 miles or more from the court designated in the warrant, the defendant arrested, if bail has not been previously set or denied by the court, shall be taken before the nearest available court or, if authorized to set bail for the crime charged pursuant to the Maine Bail Code, before the nearest available bail commissioner, who shall admit the defendant to bail for appearance before the court where the indictment, information, or complaint has been filed. Such appearance should be scheduled for no fewer than 14 days and not more than 42 days after the arrest. A determination of probable cause pursuant to Rule 4A shall not be made.

(2) *Defendants Arrested Without a Warrant.* Defendants arrested without a warrant shall be taken before the court. The complaint or information shall be filed in the Unified Criminal Docket forthwith. A determination of probable cause shall be made in accordance with Rule 4A unless an indictment has been returned.

(b) Initial Statement of Rights by the Court. When a defendant arrested, either under a warrant issued upon an indictment, an information, or upon a complaint filed in the Unified Criminal Docket or without a warrant is brought before the court or a defendant who has been summonsed appears before the court in response to a summons, the court, in open court, shall, unless waived by the defendant's counsel, inform the defendant of:

(1) the substance of the charges against the defendant;

(2) the defendant's right to retain counsel, and to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) the right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;

(4) the maximum possible sentence, and any applicable mandatory minimum sentence; and

(5) the defendant's right to trial by jury.

The statement of rights required to be given by this Rule shall be stated live to the defendant in open court by the court, or stated by the court in a video recording viewed by the defendant before his or her first appearance.

(c) Further Statement of Rights by the Court With Respect to Class C or Higher Crimes in the Absence of an Indictment or Information. A defendant charged by complaint with any Class C or higher crime shall not be called upon to plead to that Class C or higher crime, and the defendant shall be advised of the right to apply for a waiver of indictment pursuant to Rule 7(b) and to enter any plea upon a complaint or an information after a waiver is accepted. No defendant charged with murder shall be allowed to plead guilty or nolo contendere before indictment.

(d) Pleas at Initial Appearance. A defendant charged with a Class D or Class E crime (and not charged with related Class C or higher crimes) shall be called upon to plead after that defendant has been provided with the statement of rights required by subdivision (b), unless that defendant has requested a reasonable time and opportunity to consult with counsel.

If a defendant charged with a Class D or Class E crime who is not represented by a lawyer for the day or other counsel pleads "not guilty" or for whom a plea of "not guilty" is entered by the court, the court shall ensure that the defendant is aware of his or her right to trial by jury.

Before accepting a guilty or nolo contendere plea from a defendant charged with a Class D or Class E crime, the court shall comply with the requirements of Rule 11(g).

Before accepting a guilty or nolo contendere plea from a defendant charged with a Class C or higher crime, the court shall comply with the requirements of Rule 11(b).

(e) Assignment of Counsel. When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, for the limited purpose of representing the person at the initial appearance or arraignment.

The determination of indigency and the assignment and compensation of counsel shall be governed by the provisions of Rules 44, 44A, 44B, and 44C.

Committee Advisory Note

The Rule merges Rules 5 and 5C of the Maine Rules of Criminal Procedure into a single rule addressing initial proceedings in the Unified Criminal Docket for defendants arrested or summonsed for any crime (misdemeanor or felony). Rule 5B of the Maine Rules of Criminal Procedure is abandoned as no longer relevant given the unified criminal process.

The Rule parallels the content of Rules 5 and 5C but differs in the following respects.

First, the Rule replaces all references to "the Superior Court or the District Court," with the words "Unified Criminal Docket."

Second, the word "court" replaces all references to "a District Court judge or a Superior Court justice." See Committee Advisory Note to M.R.U. Crim. P. 57(d).

Third, in subdivision (a) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Fourth, in subdivision (a) the word "defendant" replaces the word "person" to make the Rule internally consistent.

Fifth, in subdivision (a)(1) the words "if authorized to set bail for the crime charged pursuant to the Maine Bail Code" are added in light of 15 M.R.S. §§ 1023(4) and 1092(4). See Committee Advisory Note to M.R.U. Crim. P. 4(f)(3).

Sixth, in subdivision (a)(1) timing relates to a defendant's appearance before the court where the indictment, information, or complaint has been filed. Specifically, "[s]uch appearance should be scheduled for no fewer than 14 days and not more than 42 days after the arrest."

Seventh, in subdivision (b) the word "before" replaces the phrase "prior to" to reflect modern usage.

Eighth, in subdivision (c) the words "pursuant to Rule 7(b)" is added following the word "indictment" both for the purpose of clarity and consistency with Rule 11(f).

III. INDICTMENT AND INFORMATION

RULE 6. THE GRAND JURY

(a) Number of Grand Jurors. The grand jury shall consist of not fewer than 13 nor more than 23 jurors and a sufficient number of legally qualified persons shall be summoned to meet this requirement.

(b) Objections to Grand Jury and to Grand Jurors.

(1) *Challenges.* Either the attorney for the State or a defendant who has been held to answer may challenge an individual grand juror on the ground that the juror is not legally qualified or that a state of mind exists on the juror's part that may prevent the juror from acting impartially. All challenges must be in writing and allege the ground upon which the challenge is made, and such challenges must be made before the time the grand jurors commence receiving evidence at each session of the grand jury. If a challenge to an individual grand juror is sustained, the juror shall be discharged, and the court may replace the juror from persons drawn or selected for grand jury service.

(2) *Motion to Dismiss*. A motion to dismiss the indictment may be based on objections to the array or, if not previously determined upon challenge, on the lack of legal qualifications of an individual juror or on the ground that a state of mind existed on the juror's part that prevented the juror from acting impartially, but an indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this Rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the Unified Criminal Docket, but the

record shall not be public except on order of the court. During the absence of the foreperson the deputy foreperson shall act as foreperson.

(d) Presence During Proceedings. While the grand jury is taking evidence, only the attorneys for the State, the witness under examination, and, when ordered by the court, a security officer, an interpreter or translator, a court reporter, or an operator of electronic recording equipment may be present. While the grand jury is deliberating or voting, only the jurors may be present.

(e) General Rule of Secrecy. A juror, attorney, security officer, interpreter, translator, court reporter, operator of electronic recording equipment, or any person to whom disclosure is made under this Rule may not disclose matters occurring before the grand jury, except as otherwise provided in these Rules or when so directed by the court. No obligation of secrecy may be imposed upon any person except in accordance with this Rule. In the event an indictment is not returned, any stenographic notes and electronic backup, if any, of an official court reporter or tape or digital record of an electronic sound recording and any written record of information necessary for an accurate transcription prepared by the operator and any transcriptions of such notes, tape, or digital record shall be impounded by the court. The court may direct that an indictment be kept secret until the defendant is in custody or has given bail, and in that event the court shall seal the indictment and no person may disclose the finding of the indictment except when necessary for the issuance or execution of a warrant or summons. Disclosure otherwise prohibited by this Rule of matters occurring before the grand jury, other than its deliberations and any vote of any juror, may be made to:

(1) an attorney for the State in the performance of the duty of an attorney for the State to enforce the state's criminal laws;

(2) such staff members of an attorney for the State as are assigned to the attorney for the State and are reasonably necessary to assist an attorney for the State in the performance of the duty of an attorney for the State to enforce the state's criminal laws; and

(3) another state grand jury by an attorney for the State in the performance of the duty of an attorney for the State to enforce the state's criminal laws.

Any person to whom matters are disclosed under paragraphs (1) or (2) of subdivision (e) of this Rule may not utilize that grand jury material for any purpose other than assisting the attorney for the State in the performance of such attorney's duty to enforce the state's criminal laws.

(f) Recording of Proceedings. Upon motion of the defendant or the attorney for the State, the court, in its discretion for good cause shown, may order that a court reporter or operator of electronic recording equipment be present for the purpose of taking evidence. No person other than a court reporter or operator of electronic recording equipment shall be permitted to record any portion of the proceeding.

(g) Procedure for Preparation and Disclosure of Transcript. No transcript may be prepared of the record of the evidence presented to the grand jury without an order of the court. Upon motion of the defendant or the attorney for the State and upon a showing of particularized need, the court may order a transcript of the record of the evidence to be furnished to the defendant or the attorney for the State upon such terms and conditions as are just.

(1) Transcripts of the record of the evidence may also be furnished upon such terms and conditions as are just

(A) When ordered by the court preliminarily to or in connection with a judicial proceeding and upon a showing of particularized need; or

(B) When ordered by the court at the request of an attorney for the State to an appropriate official of another jurisdiction for the purpose of enforcing the criminal laws of another jurisdiction upon a showing that such disclosure may constitute evidence of a violation of the criminal laws of that other jurisdiction.

(2) A petition for disclosure pursuant to paragraph (1) of subdivision (g) shall be filed in the Unified Criminal Docket where the grand jury was convened. Unless the hearing is ex parte, which it may be when the petitioner is the State, the petitioner shall serve written notice of the petition upon

(A) The attorneys for the State who were present before the grand jury, or their designee;

(B) The parties to the judicial proceeding if disclosure is sought in connection with such a proceeding; and

(C) Such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard before disclosure of the transcript of the record of the evidence. The court shall order such a

hearing to be closed to the extent necessary to prevent disclosure of matters occurring before the grand jury.

(3) If the judicial proceeding giving rise to the petition is before a court of another county, the court that convened the grand jury may transfer the disclosure hearing to the Unified Criminal Docket of the county of the petitioning court, unless the court convening the grand jury may reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court convening the grand jury may order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy.

(h) Disclosure for Certain Law Enforcement Purposes. Disclosure otherwise prohibited by this Rule of matters occurring before the grand jury, other than its deliberations and any vote of any grand juror, may be made to such law enforcement personnel (including personnel of the United States, another state or territory, or a subdivision of such) as are deemed necessary by an attorney for the State to assist in the performance of the duty of an attorney for the State to enforce the state's criminal laws. Any person to whom matters are disclosed under this subdivision may not utilize that grand jury material for any purpose other than assisting an attorney for the State in the performance of such attorney's duty to enforce the state's criminal laws. An attorney for the State who has made a disclosure pursuant to this subdivision with respect to matters occurring before the grand jury shall promptly provide the court with the names of the persons and agencies to whom such disclosure has been made, and shall certify that the attorney for the State has advised such persons of their obligation of secrecy under this Rule.

(i) Finding and Return of Indictment. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned to the court by the grand jury or its foreperson or its deputy foreperson in open court. If the defendant is in custody or has given bail and 12 jurors do not concur in finding an indictment, the foreperson shall so report to the court in writing forthwith.

(j) Excuse. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused. No juror may participate in voting with respect to an indictment unless the juror shall have been in attendance at the

presentation of all the evidence produced in favor of and adverse to the return of the indictment.

Committee Advisory Note

The Rule parallels the content of Rule 6 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (b)(1), (d), (e), (f), (g), and (h) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, in subdivisions (b)(1) and (g)(2)(C) the word "before" replaces the phrase "prior to" to reflect modern usage.

Third, in subdivision (b)(2) the word "that" replaces the word "which" to reflect modern usage.

Fourth, in subdivision (c) the reference to "the clerk of court" is replaced by "the clerk of the Unified Criminal Docket."

Fifth, in subdivision (g)(3) the words "Superior Court" are deleted and the words "Unified Criminal Docket" replace the reference to the "Superior Court."

Sixth, in subdivisions (g)(3) [other than as stated immediately above] and (h) the word "court" replaces the words "the Superior Court." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d).

Seventh, in subdivision (h) the final sentence is rearranged to enhance clarity.

RULE 7. THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment, Information, or Complaint. All proceedings in which the crime charged is murder shall be prosecuted by indictment. All proceedings in which the crime charged is a Class A, Class B, or Class C crime shall be prosecuted by indictment, unless indictment is waived, in which case prosecution may be by information or complaint in accordance with this Rule.

In the event that a Class D or Class E charge may be joined with a related charge of murder or a related charge involving at least one Class A, Class B, or Class C crime under Rule 8(a), that Class D or Class E charge should be prosecuted in the same indictment charging murder or the same indictment, information, or complaint charging the Class A, Class B, or Class C crime.

Any indictment, information, or complaint so filed, if the indictment, information, or complaint supplements or replaces another charging instrument, must indicate the docket number previously assigned to the earlier charging instrument.

(b) Waiver of Indictment. Any crime except murder may be prosecuted by information or complaint upon request of the defendant if prosecution by indictment is waived by the defendant in open court. The waiver shall be in writing and signed in open court by the defendant, but the absence of a writing in such a case shall not be conclusive evidence of an invalid waiver.

(c) Nature and Contents. An indictment shall be signed by the foreperson of the grand jury, and an information shall be signed by the attorney for the State and certified on information and belief. The indictment or the information shall be a plain, concise, and definite written statement of the essential facts constituting the crime charged. The indictment or information is not required to negate any facts designed a "defense" or any exception, exclusion, or authorization set forth in the statute defining the crime. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the crime are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law, and the class of crime that the defendant is alleged therein to have violated. Error in the citation of a statute or its omission shall not be grounds for the dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

All charges against a defendant arising from the same incident or course of conduct should be alleged in one indictment or information. An indictment or information may include multiple counts charged against a defendant when authorized pursuant to Rule 8(a). Nothing in this Rule shall prohibit the later commencement of additional charges arising from the original incident or course

of conduct. The court may administratively consolidate such subsequent charges with the original indictment or information into a single case docket. Two or more defendants may not be charged in the same indictment or information.

If a prior conviction must be specially alleged pursuant to 17-A M.R.S. § 9-A(1) it may not be alleged in an ancillary indictment, information or separate count thereof but instead must be part of the allegations constituting the principal crime. A prior conviction allegation made in one count may be incorporated by reference in another count.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(e) Amendment of Indictment or Information. The court may permit the amendment of an indictment charging a crime other than a Class D or Class E crime at any time before verdict or finding if the amendment does not change the substance of the crime.

The court may permit the amendment of an indictment charging a Class D or Class E crime, or an information at any time before verdict or finding if no additional or different crime is charged and if no substantial right of the defendant is prejudiced.

Unless the statutory class for the principal crime would be elevated thereby, amendment of an indictment or information for purposes of 17-A M.R.S. § 9-A(1) may be made as of right by the attorney for the State at any time before the imposition of sentence on the principal crime, and sentencing shall be continued until the attorney for the State has been afforded the opportunity to obtain an amended indictment if the allegation must be made by the grand jury.

With respect to joint recommendations for disposition involving an amendment to the indictment or information, the motion to amend the indictment or information must be in writing, must be accompanied by the proposed amended indictment or information, and must be filed with the clerk for docketing before it is presented to a justice or judge for disposition.

(f) Arrest Tracking Number (ATN) and Charge Tracking Number (CTN). Unless the crime charged is an excepted crime under Rule 57, each count of the indictment or information should include the assigned Arrest Tracking Number and Charge Tracking Number.

(g) State Identification Number. If a State Identification Number has been assigned to a defendant by the State Bureau of Identification, and if that State Identification Number is known to the attorney for the State, the indictment or information shall contain the State Identification Number.

(h) Statute Sequence Number. Each count of the indictment or information shall set forth the Statute Sequence Number for the crime or crime variant charged.

Committee Advisory Note

The Rule parallels the content of Rule 7 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (b) the procedure for waiver of indictment by a defendant is changed to require both that the waiver be in writing and that it be signed in open court. However, subdivision (b) also provides that the absence of a writing in such a case is not conclusive evidence of an invalid waiver. This same procedure is also applied in the waiver of jury trial context. See Committee Advisory Note to M.R.U. Crim. P. 23(a).

Second, in subdivision (c), (e), and (g) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Third, in subdivision (c) the word "that" replaces the word "which" in the seventh sentence to reflect modern usage.

Fourth, in subdivision (e) the word "before" replaces the phrase "prior to" to reflect modern usage.

Fifth, a new subdivision (h) is added requiring that each count of the indictment or information identify the Statute Sequence Number for the crime or crime variant charged. See Committee Advisory Note to M.R.U. Crim. P. 3(g) and 57(h).

RULE 8. JOINDER OF CRIMES AND OF DEFENDANTS

(a) Joinder of Crimes. Two or more crimes should be charged in the same indictment, information, or complaint in a separate count for each crime if the

crimes charged, whether of the same class or different classes, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions that are connected or that constitute parts of a common scheme or plan.

(b) Joinder of Defendants. The attorney for the State who initiates a prosecution against two or more defendants may file a Notice of Joinder with respect to defendants who are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting a crime or crimes. A Notice of Joinder must be filed with each case to be joined. Upon the filing of such notices, the cases so designated in the notices are joined. The defense may move pursuant to paragraph (d) of this Rule for relief from the Notice of Joinder. The Notice of Joinder should be filed at the same time as the charging instrument but in any event must be filed no later than 14 days after the charging instrument is filed.

(c) Trial Together of Indictments, Informations or Complaints. The court may order two or more indictments, informations, or complaints to be tried together against a single defendant if the crimes should have been joined under paragraph (a). The court may order two or more indictments, informations, or complaints to be tried together against two or more defendants if the defendants could have been joined under paragraph (b).

(d) Relief From Prejudicial Joinder. If it appears that a defendant or the State is prejudiced by a joinder of offenses against a single defendant or by the joinder of defendants, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires, including ordering multiple simultaneous trials.

Committee Advisory Note

The Rule parallels the content of Rule 8 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the word "that" replaces the word "which" to reflect modern usage.

Second, in subdivisions (b) and (d) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a governmental actor or as a party.

RULE 9. [RESERVED]

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

RULE 10. ARRAIGNMENT

Unless otherwise provided by law, arraignment shall be conducted in open court and shall consist of reading the indictment, information, or complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The clerk shall cause a copy of the indictment or information to be furnished to the defendant or the defendant's counsel before the defendant is called upon to plead, and notation thereof shall be made in the docket. The clerk shall cause a copy of the complaint, other than a uniform summons and complaint, to be furnished to the defendant or the defendant's counsel before the defendant is called upon to plead, if requested by the defendant or the defendant's counsel. When the crime charged is a Class D or Class E crime, a represented defendant may, through counsel, enter a plea in writing without the necessity of an arraignment in open court unless the court requires the defendant to appear personally.

When the administration of justice would be served thereby, the court may order that an arraignment occur in a county other than the county in which the prosecution is pending.

Committee Advisory Note

The Rule mirrors the content of Rule 10 of the Maine Rule of Criminal Procedure.

RULE 11. PLEAS; SPECIAL CIRCUMSTANCES AS TO ACCEPTANCE OF CERTAIN PLEAS; NOTICE TO NONCITIZENS OF POTENTIAL ADVERSE IMMIGRATION CONSEQUENCES OF A PLEA

(a) Pleas for any Crime.

(1) *In General*. A defendant may plead not guilty, not criminally responsible by reason of insanity, guilty, or nolo contendere. A defendant may plead both not guilty and not criminally responsible by reason of insanity to the same charge.

The court may refuse to accept a plea of guilty or nolo contendere.

If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or nolo contendere, the court shall enter a plea of not guilty.

(2) *Conditional Plea.* With the approval of the court and the consent of the attorney for the State, a defendant may enter a conditional plea of guilty or nolo contendere. A conditional plea shall be in writing. It shall specifically state any pretrial motion and the ruling thereon to be preserved for appellate review. If the court approves and the attorney for the State consents to entry of the conditional plea of guilty or nolo contendere, the parties shall file a written certification that the record is adequate for appellate review and that the case is not appropriate for application of the harmless error doctrine. Appellate review of any specified ruling shall not be barred by the entry of the conditional plea.

If the defendant prevails on appeal, the defendant shall be allowed to withdraw the plea.

(b) Prerequisites to Accepting a Plea of Guilty or Nolo Contendere to a Class C or Higher Crime. In all proceedings in which the crime charged is murder or a Class A, Class B, or Class C crime, before accepting a plea of guilty or nolo contendere, the court shall ensure

(1) That the plea is made with knowledge of the matters set forth in subdivision (c); and

(2) That the plea is voluntary within the meaning of subdivision (d); and

(3) That there is a factual basis for the charge, as provided in subdivision (e); and

(4) That an unrepresented defendant has knowingly and intelligently waived the defendant's right to counsel.

(c) Ensuring That the Plea Is Made Knowingly. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The elements of the crime charged, the maximum possible sentence and any mandatory minimum sentence; and

(2) That by pleading guilty or nolo contendere the defendant is giving up the right to a trial, at which the defendant would have the following rights:

(A) The right to be considered innocent until proven guilty by the State beyond a reasonable doubt; and

(B) The right to a speedy and public trial by the court or by a jury; and

(C) The right to confront and cross-examine witnesses against the defendant; and

(D) The right to present witnesses on the defendant's behalf and the right to either be or decline to be a witness on the defendant's behalf.

(d) Ensuring That the Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall determine that the plea is the product of the defendant's free choice and not the result of force, threats, or promises other than those in connection with a plea agreement. The court shall make this determination by addressing the defendant personally in open court. The court shall inquire as to the existence and terms of a plea agreement, as provided in Rule 11A.

(e) Ensuring That There Is a Factual Basis for the Plea. Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall make such inquiry of the attorney for the State as shall satisfy it that the State has a factual basis for the charge.

(f) Acceptance of a Plea of Guilty to a Class C or Higher Crime Before Indictment. A defendant who, before indictment, desires to enter a plea of guilty to a charge of a Class A, B, or C crime may in open court waive the defendant's right to indictment by a grand jury as provided in Rule 7(b).

If the court refuses to accept the plea or the defendant, after waiving indictment in open court, declines to plead guilty or if a plea of guilty is set aside, the waiver shall be considered withdrawn and the case shall proceed in accordance with these Rules as if no waiver had been made.

(g) Prerequisites to Accepting a Plea of Guilty or Nolo Contendere to a Class D or Class E Crime From an Unrepresented Defendant. Before accepting a plea of guilty or nolo contendere to a Class D or Class E crime from a

defendant who is not represented by retained or appointed counsel or a lawyer for the day, other than as provided in subdivision (j), the court shall address the defendant personally in open court and make such inquiry as to ensure that the plea is knowing, intelligent, and voluntary.

(h) Potential Adverse Immigration Consequences to Noncitizens of the Plea to Any Crime. Before accepting a plea of guilty or nolo contendere for any crime, the court shall inquire whether the defendant was born in the United States. If, based on the defendant's answer, it appears that the defendant is not a United States citizen, the court shall ascertain from defense counsel whether the defendant has been advised of the risk under federal law of adverse immigration consequences, including deportation, as a result of the plea. If no such advice has been provided, or if the defendant is unrepresented, the court shall notify the defendant that the plea can create a risk of adverse immigration consequences, including deportation, and may continue the proceeding in order for counsel to provide the required advice or, in the case of an unrepresented defendant, for investigation and consideration of the consequences by the defendant. The court is not required or expected to inform the defendant of the nature of any adverse immigration consequences.

(i) Transfer for Plea and Sentence. The defendant may, in writing, if a criminal charge is currently pending in a court, request permission to plead guilty or nolo contendere to any other crime the defendant has committed in the state, subject to the written approval of the attorneys for the State, if more than one. Upon receipt of the defendant's written statement and of the written approval of the attorneys for the State, the clerk of the Unified Criminal Docket in which a complaint, an indictment or an information is pending shall transmit the papers in the proceeding to the clerk of courts where the defendant is currently being held, and the prosecution shall continue in that court. The defendant's plea of guilty or nolo contendere constitutes a waiver of venue.

The court receiving a case transferred for plea and sentence shall issue an order that either requires the case to remain in the sentencing court or requires the case to be returned to the originating court.

(j) Acceptance of Guilty Plea by the Clerk to a Charge Punishable by a Fine. At the signed request of the defendant, the clerk of the Unified Criminal Docket may accept a guilty plea upon payment of a fine as set by the court in the particular case, or as set by the court in accordance with a schedule of fines established by the court with the approval of the Chief Judge of the District Court

for various categories of such crimes. Acceptance of a plea by the clerk shall be conditioned upon the defendant signing a form acknowledging that the defendant has read and understands the form and understands that, by entering the plea of guilty, the defendant is giving up all of the rights listed on the form, and that the plea will result in a criminal conviction, the punishment for which is the fine paid by the defendant.

Committee Advisory Note

The Rule parallels the content of Rule 11 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a)(2), (e), and (i) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a governmental actor or a party.

Second, in the heading to subdivision (f) and in its substance the word "before" replaces the phrase "prior to" to reflect modern usage.

Third, in subdivisions (i) and (j) references to "the clerk of the court" are replaced by "the clerk of the Unified Criminal Docket."

Fourth, in subdivision (i), the words "where the defendant is currently being held" replace the words "for the court in which the defendant is held" to enhance clarity.

RULE 11A. PLEA AGREEMENTS

(a) In General. The attorney for the State and the attorney for the defendant or the defendant when unrepresented may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged crime or to a lesser or related crime, any or all of the following will occur:

(1) The attorney for the State will dismiss other charges;

(2) The attorney for the State will not oppose the defendant's requested disposition;

(3) The attorney for the State will recommend a particular disposition; or

(4) Both sides will recommend a particular disposition.

At any stage of the proceedings, the court may participate in the negotiation of the specific terms of the plea agreement in the manner set forth in Rule 18 relating to dispositional conferences.

(b) Notice of Plea Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court at the time the plea is offered.

(c) Statement of Reasons in the Case of a Class C or Higher Crime. If the plea agreement in the case of a Class C or higher crime includes a recommendation of the type specified in subdivision (a)(3) or (a)(4), the attorney for the State shall set forth on the record the reasons for the recommendation. In addition, in the case of a recommendation of the type specified in subdivision (a)(4), the attorney for the defendant shall set forth on the record the reasons for the recommendation.

Nothing herein shall relieve the parties of the obligation to present relevant facts to the court.

(d) Acceptance or Rejection by the Court of Recommendation Included in Plea Agreement. If the court accepts the recommendation, it may embody in the judgment and sentence a disposition more favorable to the defendant than that recommended, but it may not embody in the judgment and sentence any disposition less favorable to the defendant than that recommended.

The court shall not reject the recommendation without giving the defendant the opportunity to withdraw his plea, as provided in subdivision (e).

The court may defer imposition of sentence pending an opportunity to consider the presentence report.

(e) Withdrawal of Plea Upon Rejection of Recommendation. If the plea agreement includes a recommendation of the type specified in subdivision (a)(3) or (a)(4), and if the court at the time of sentencing intends to enter a disposition less favorable to the defendant than that recommended, the court shall on the record inform the parties of this intention, advise the defendant personally in open court that the court is not bound by the recommendation, advise the defendant that, if the defendant does not withdraw the defendant's plea of guilty or nolo contendere the disposition of the case will be less favorable to the defendant than that

recommended, and afford the defendant the opportunity to withdraw the defendant's plea. The court will, if possible, inform the defendant of the intended disposition.

(f) Compliance With Plea Agreement. If the plea agreement is of the type specified in subdivision (a)(1) or (a)(2) of this Rule and if the attorney for the State fails to comply with the plea agreement, the court shall afford the defendant the opportunity to withdraw the defendant's plea or grant such other relief, including enforcing the plea agreement, as the court deems appropriate.

(g) Inadmissibility of Pleas, Offers of Pleas, and Related Statements. The admissibility of evidence of a withdrawn plea of guilty or nolo contendere, or of offers or statements pertaining thereto, is governed by Rule 410 of the Maine Rules of Evidence. A plea of nolo contendere is not admissible in any civil or criminal proceedings against the person who made the plea.

(h) Acceptance of a Negotiated Plea of Not Criminally Responsible by Reason of Insanity. Before accepting a negotiated plea of not criminally responsible by reason of insanity, the court shall conduct a hearing and receive evidence sufficient to support a finding of insanity.

Committee Advisory Note

The Rule parallels the content of Rule 11A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a), (c), and (f) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, in subdivision (a), in the first sentence, the word "unrepresented" replaces the word "pro se" as a matter of word choice.

Third, the final paragraph in subdivision (a) relating to court participation in plea negotiations is changed to allow a court to "participate in the negotiation of the specific terms of the plea agreement in the manner set forth in Rule 18 relating to dispositional conferences" without such participation being contingent upon a request of or with the agreement of the parties.

Fourth, subdivision (b) is modified to require that in any case, notwithstanding the Class of the crime to which the plea relates, if a plea agreement has been reached by the parties, the court must, at the time the plea is offered, require the disclosure of the agreement on the record in open court.

RULE 11B. FILING AGREEMENTS

(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 court and, upon such filing, the agreement will become effective.

(b) Court Approval Unnecessary. The approval of the court for the filing of a written filing agreement by the parties is unnecessary; however, a filing agreement is subject to the control of the court. If the agreement calls for the payment by the defendant of costs of prosecution such agreed-upon costs may be in any amount up to, but not exceeding, the maximum authorized fine amount for the particular crime based upon its sentencing class and need not reflect the actual costs of prosecution.

(c) Disposition During or at Expiration of Filing Period. Except where a filing agreement expressly provides otherwise as specified in subdivision (d), if the defendant has satisfied each of the filing agreement's conditions, if any, at the conclusion of the agreed upon filing period the defendant is entitled to have the filed indictment, information, or complaint dismissed with prejudice. In this regard, unless the attorney for the State files a motion alleging a violation of one or more of the agreement's conditions by the defendant and seeking to have the criminal proceeding in which the indictment, information, or complaint was filed reactivated by the court, at the expiration of the filing period the clerk shall enter a dismissal of the filed charging instrument with prejudice. In the event the attorney for the State files a motion during or at the end of the filing period alleging a violation of one or more of the agreement's conditions, the attorney for the State is entitled to have the criminal proceeding reactivated by the court if, following a hearing on the motion, the court finds by a preponderance of the evidence that the defendant has violated one or more of the agreement's conditions.

(d) Special Reservations in the Filing Agreement. If the attorney for the State wishes to preserve the right to reinstate a criminal proceeding after the filing period has fully run when no breach of conditions has occurred, or to preserve the right to initiate the same or additional criminal charges against the defendant arising out of the same event or conduct in a separate criminal proceeding while the filing period is running, the attorney for the State must expressly reserve such a right in the written filing agreement and the defendant must expressly agree to it.

Committee Advisory Note

The Rule parallels the content of Rule 11B of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a) [first sentence], (c), and (d) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, in subdivision (a) [third sentence] the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

RULE 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the complaint, the indictment, and the information, and the pleas of not guilty, not criminally responsible by reason of insanity, guilty, and nolo contendere. All other pleas and demurrers and motions to quash are abolished, and defenses and objections raised before trial that heretofore would have been raised by one or more of such other pleas or pleadings shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) Motion Raising Defenses and Objections.

(1) *Defenses and Objections That May Be Raised.* Any defense or objection that is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections That Must Be Raised*. Defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint, other than that it fails to show jurisdiction in the court, may be raised only by motion before trial. The motion shall include all

such defenses and objections available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed and acted upon by the court at any time during pendency of the proceeding.

(3) *Time of Making Motions and Filing and Service of Motions.*

(A) Motions to dismiss, motions relating to joinder of offenses, motions seeking discovery pursuant to court order under Rules 16 and 16A, motions to suppress evidence, and other motions relating to the admissibility of evidence shall be served upon the opposing party, but not filed with the court, at least 7 days before the date set for the dispositional conference under Rule 18. If the matter is not resolved at the dispositional conference, the motions shall be filed with the court no later than the next court day following the dispositional conference. If, as a result of the dispositional conference, the party filing motions determines the need to alter or amend a motion previously served, the amended motion must be served upon the opposing party pursuant to Rule 49.

(B) All other motions shall be filed with the court promptly after grounds for the motion arise.

(4) *Hearing on Motion*. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. All issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) *Effect of Determination*. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant has not previously pleaded. A plea previously entered shall stand. If the motion is based upon a defect that may be cured by amendment of the complaint or information, the court may deny the motion and order that the complaint or information be amended. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information, or complaint the defendant shall be discharged.

(c) Motion In Limine. The defendant or the State may make a pretrial motion requesting a pretrial ruling on the admissibility of evidence at trial or on other matters relating to the conduct of the trial no later than 7 days before the date

set for jury selection. The court may rule on the motion or continue it for a ruling at trial. In determining whether to rule on the motion or to continue it, the court should consider the importance of the issue presented, the desirability that it be resolved before trial, and the appropriateness of having the ruling made by the justice or judge who will preside at trial. For good cause shown the justice or judge presiding at trial may change a ruling made in limine.

Committee Advisory Note

The Rule parallels the content of Rule 12 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a), (b)(1) and (2) [headings], and (b)(5) the word "that" replaces the word "which" to reflect modern usage.

Second, subdivision (b)(2) of the Maine Rules of Criminal procedure provides that "lack of [subject-matter] jurisdiction" is a defect that "shall be noticed and acted upon by the court at any time during pendency of the proceeding." Included in this defect category is the failure of a charging instrument to allege all the necessary elements of the crime (i.e., "to charge an offense"). See also M.R.U. Crim. P. 34 and 1 Cluchey & Seitzinger, *Maine Criminal Practice* § 12.4 IV-60 (Gardiner ed. 1995). Until recently the case law of Maine has repeatedly stated that this failure affects the trial court's adjudicatory authority to hear the matter. See *State v. Lavasseur,* 538 A.2d 764, 766 (Me. 1988); see also 1 Cluchey & Seitzinger, *Maine Criminal Practice* § 12.4 IV-61 (Gardiner ed. 1995). However, in 2004 the Law Court noted that this case-law characterization is anomalous and is inconsistent with United States Supreme Court precedents, citing *United States v. Cotton,* 535 U.S. 625, 630 (2002), and *United States v. Williams,* 341 U.S. 58, 66 (1951). See *Landmark Realty v. Leasure*, 2004 ME 85, ¶ 7 n.1, 853 A.2d 749. On April 25, 2014, The Supreme Court of the United States, following a suggestion made by the Federal Advisory Committee that the *Cotton* holding supported the change, adopted an amendment to Rule 12(b) of the Federal Rules of Criminal Procedure requiring defendants to raise before trial any objection that the charging instrument fails to state an offense. See Fed. R. Crim. P. 12(b)(3)(B)(v), effective December 1, 2004. Subdivision (b)(2) is similarly amended.

Third, the heading in subdivision (b)(3) is changed from "*Time of Making Motion*" to "*Time of Making Motions and Filings and Service of Motions*" to more accurately reflect its content.

Fourth, in subdivision (b)(3) the procedure is markedly different because of the existence of the dispositional conference pursuant to Rule 18. The modified procedure now distinguishes between the listed motions that must not be filed with the court unless the case remains unresolved following the dispositional conference from those unlisted motions that must be filed with the court prior to the dispositional conference if the grounds for the motion arise. The listed motions not to be filed with the court until the dispositional conference must nonetheless be served upon the opposing party at least 7 days before the date set for the dispositional conference. In the event the case is not resolved at the dispositional conference the motion earlier served on the opposing party must be filed with the court no later than the next court day following the conference. A party may alter or amend a motion previously served upon the opposing party before filing it with the court if the party determines such to be necessary as a result of the dispositional conference. Each altered or amended motion must be served upon the opposing party pursuant to Rule 49.

Fifth, subdivision (c) imposes a timing requirement on the making of a motion in limine. Such must be made no later than 7 days before the date set for jury selection.

Sixth, in subdivision (c) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

RULES 13 AND 14. [RESERVED]

RULE 15. DEPOSITIONS

(a) When Taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the witness' testimony is material, and that it is necessary to take the witness' deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information, or complaint may upon motion and notice to the parties order that the witness's testimony be taken by deposition and that any designated books, papers, documents, or other tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person

to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) Defendant's Counsel. If a defendant is without counsel the court shall advise the defendant of the defendant's right and assign counsel to represent the defendant pursuant to Rule 44.

(d) How Taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the court finds that the witness is dead; or that the witness is out of the State of Maine, unless the court finds that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party offering part of a deposition to offer all of it that is relevant to the part offered and any party may offer other parts.

(f) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(g) At the Instance of the State or Witness. The following additional requirements shall apply if the deposition is taken at the instance of the State or witness. The officer having custody of a defendant shall be notified of the time and place set for the examination, shall produce the defendant at the examination, and shall keep the defendant in the presence of the witness during the examination. A defendant not in custody shall be given notice and shall have the right to be present at the examination.

Committee Advisory Note

The Rule parallels the content of Rule 15 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the word "other" is added after the word "or" and before the word "tangible" to enhance clarity.

Second, in subdivision (g) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

RULE 16. DISCOVERY BY THE DEFENDANT

(a) Automatic Discovery.

(1) *Scope of Automatic Discovery*. The attorney for the State shall provide as automatic discovery all matters set forth in this subdivision that are within the possession or control of the attorney for the State. The obligation of the attorney for the State extends to matters within the possession or control of any member of the attorney for the State's staff and of any official or employee of this State or any political subdivision thereof who regularly reports or who, with reference to a particular case, has reported to the office of the attorney for the State.

(2) *Duty of the Attorney for the State*. The attorney for the State shall provide the following to the defendant:

(A) The police report(s) and any other documents used by the prosecutor in deciding to charge the defendant.

(B) A statement describing any testimony or other evidence intended to be used against the defendant that

(i) Was obtained as a result of a search and seizure or the hearing or recording of a wire or oral communication;

(ii) Resulted from any confession, admission, or statement made by the defendant; or

(iii) Relates to a lineup, showup, picture, or voice identification of the defendant.

(C) Any written or recorded statements and the substance of any oral statements made by the defendant.

(D) A statement describing any matter or information known to the attorney for the State that may not be known to the defendant and that tends to create a reasonable doubt of the defendant's guilt as to the crime charged.

(E) A copy of any notification provided to the court by the attorney for the State pursuant to Rule 6(h) that pertains to the case against the defendant.

(F) Any books, papers, documents, electronically stored information, photographs (including motion pictures and video tapes), tangible objects, buildings or places, or copies or portions thereof, that the attorney for the State intends to use as evidence in any proceeding or that were obtained or belong to the defendant.

(G) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(H) The names, dates of birth, and, except as otherwise provided by 17-A M.R.S. § 1176(4) relative to alleged victims, the addresses of the witnesses whom the State intends to call in any proceeding. The fact that a listed witness is not called shall not be commented upon at trial.

(I) Written or recorded statements of witnesses and summaries of statements of witnesses contained in police reports or similar matter.

(3) *Exception: Work Product*. The attorney for the State is not required to disclose legal research or records, correspondence, reports, or memoranda to the extent that they contain the mental impressions, conclusions, opinions, or legal theories of the attorney for the State or members of his or her legal staff.

(4) *Manner of Providing Automatic Discovery*. With respect to written materials, except as otherwise provided in subdivision (b)(1), the attorney for the State shall provide copies thereof. With respect to tangible objects, the attorney for the State shall allow the defendant at any reasonable time and in any reasonable manner to inspect, photograph, or have reasonable tests made. With respect to audio, video, motion pictures, photographic evidence, or electronically stored information, the attorney for the State shall disclose the existence of such evidence with automatic discovery and, upon the request of the defendant and where practicable, shall provide the defendant an opportunity to obtain an electronic copy, at any reasonable time and in any reasonable manner.

When the attorney for the State is unable to provide the defendant an opportunity to obtain an electronic copy of audio, video, motion pictures, photographic evidence, or electronically stored information because the technology makes such provision impracticable, or when such copying is barred, for example,

as controlled by 15 M.R.S. § 1121 relative to sexually explicit material, the attorney for the State shall provide the defendant a reasonable opportunity to review the audio, video, motion pictures, photographic evidence, or electronically stored information.

(b) Time for Providing Automatic Discovery.

(1) *At Initial Appearance on a Class A, B, or C Charge or Arraignment on a Class D or E Charge.* The attorney for the State shall produce and allow the defendant to review the information described in subdivision (a)(2)(A).

(2) *After a Defendant has entered a "Not Guilty" Plea to a Class D or E Crime.* In the manner dictated by subdivision (a)(4), the attorney for the State shall provide the information described in subdivision (a)(2)(B) through (I) within 7 days after the arraignment or entry of a written plea of "not guilty."

(3) *When a Dispositional Conference is to Occur Before Indictment for a Class A, B, or C Crime*. In the manner dictated by subdivision (a)(4), the attorney for the State shall provide the information described in subdivision (a)(2)(B) through (I) no later than 14 days before any dispositional conference that occurs before indictment.

(4) *At Arraignment on a Class A, B, or C Crime.* In the manner dictated by subparagraph (a)(4), the attorney for the State shall provide the information described in subdivision (a)(2)(B) through (I) at arraignment.

(5) *Continuing Duty to Disclose*. If additional material that would have been furnished to the defendant as automatic discovery comes within the possession or control of the attorney for the State after the timeframes listed in subdivision (b)(1)-(4), the attorney for the State shall so inform the defendant within 14 days thereafter.

(6) *Protective Order*. Upon motion of the attorney for the State, and for good cause shown, the court may make any order that justice requires.

(7) *Defendant's Obligation*. Promptly after becoming aware of any material that the defendant wishes to review in order to prepare a defense, and that should have but has not yet been provided as automatic discovery pursuant to this Rule, the defendant must make a written request to the State for the material. The State must respond to the request, in writing, within 14 days.

(c) Discovery Upon Request

(1) *Scope and Timing of Request*. Except as to materials the State is required to provide as automatic discovery pursuant to subparagraph (a)(2) or work product as defined in subparagraph (a)(3), a defendant may make a written request to have the State provide any other books, papers, documents, electronically stored information, photographs (including motion pictures and videotapes), or copies or portions thereof, or tangible objects, or access to buildings or places, that are material and relevant to the preparation of the defense.

(2) *Response by the Attorney for the State*. Upon receipt of a written request from the defendant pursuant to subdivision (c)(1), the attorney for the State shall, within a reasonable time, provide a written response to the defendant that:

(A) provides the requested material, in the manner dictated by subdivision (a)(4);

(B) notifies the defendant that the requested material will be provided as soon as it can reasonably be obtained by the State;

(C) notifies the defendant that the requested material is not within the possession or control of the State; or

(D) notifies the defendant that the State objects to the request.

If additional material that would have been furnished to the defendant under this subdivision comes within the possession or control of the attorney for the State after the defendant has had access to similar materials, the attorney for the State shall so inform the defendant within 14 days thereafter.

(d) Discovery Pursuant to Court Order.

(1) *Bill of Particulars*. A motion for a bill of particulars may be entertained and granted by the court if defense counsel or the unrepresented defendant satisfies the court that

(A) Discovery has been completed under this Rule; and

(B) That such discovery is inadequate to establish a record upon which to plead double jeopardy, or to prepare an effective defense because further information is necessary respecting the charge stated in the charging instrument, or to avoid unfair prejudice.

The bill of particulars may be amended at any time subject to such conditions as justice requires.

(2) *Motions for Discovery Necessitated by Subparagraph (c)(2)(D)*. If the State notifies the defendant that it objects to his or her written request for additional discovery, the defendant may file a motion with the court, asking that the court order the State to provide any books, papers, documents, electronically stored information, photographs (including motion pictures and videotapes), or copies or portions thereof, or tangible objects, or access to buildings or places, that the defendant has requested and that are material and relevant to the preparation of the defense.

The State shall respond to any such motion within 7 days. Thereafter, the court may discuss the motion at a dispositional conference and may rule on the motion with or without a hearing.

(3) *Grand Jury Transcripts*. Discovery of transcripts of testimony of witnesses before a grand jury is governed by Rule 6.

(4) *Order for Preparation of Report by Expert Witness*. If an expert witness whom the State intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the attorney for the State serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify and a summary of the expert's opinions and the grounds for each opinion.

(5) *Specific Discovery Order in Certain Cases.* In all homicide cases and, by order of the court, in other cases involving forensic materials, a specific discovery order will be issued that will control the discovery process.

(e) Sanctions for Noncompliance. If the attorney for the State fails to comply with this Rule, the court, on motion of the defendant or on its own motion, may take appropriate action, which may include, but is not limited to, one or more of the following: requiring the attorney for the State to comply; granting the

defendant additional time or a continuance; relieving the defendant from making a disclosure required by Rule 16A; prohibiting the attorney for the State from introducing specified evidence; and dismissing charges with or without prejudice.

Committee Advisory Note

The Rule bears little resemblance to Rule 16 of the Maine Rules of Criminal Procedure both in terms of form and content. It differs in the following respects.

First, throughout subdivisions (a), (b), (c), (d), and (e) when appearing in the term, "attorney for the State" the "s" in the word "state" is capitalized. See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f). In these same subdivisions the "s" in the stand-alone word "State" is capitalized because in the context in which it is used it refers either to a governmental actor or a party.

Second, in subdivision (a)(1), and (2)(B) and (D) the word "that" replaces the word "which" to reflect modern usage.

Third, subdivision (a)(1) now addresses the general obligation of an attorney for the State to provide automatically all matters contained in new paragraph (2) that are in his or her "possession or control." Its content carries over a portion of subdivision (b)(1) of the Maine Rules of Criminal Procedure.

Fourth, new subdivision (a)(2), like subdivision (a)(1) of the Maine Rules of Criminal Procedure, addresses all matters that are automatically discoverable. Paragraph (2)(A) is new and requires the attorney for the State to automatically provide "[t]he police report(s) and other documents used by the prosecutor in deciding to charge the defendant." It is the information now required to be produced for the defendant's review at the initial appearance on a felony charge or at the arraignment on a misdemeanor charge. See subdivision (b)(1). Subdivisions (a)(3) and (b)(5) of the Maine Rules of Criminal Procedure are not carried forward into the new Rule. New subparagraphs (B), (C), (D), and (E) of paragraph (2) are carried over from subdivision (a)(1)(A), (B), (C), and (D) of the Maine Rules of Criminal Procedure. New subparagraphs (F), (G), (H), and (I) of paragraph (2) contain matters that, under the Maine Rules of Criminal Procedure, are discoverable only upon the written request of the defendant, but are now required to be automatically provided. See M.R. Crim. P. 16(b)(2)(A)-(E). However, new subparagraphs (F) and (H) are carried over with changes. As to subparagraph (F), that portion of Rule 16(b)(2)(A) of the Maine Rules of Criminal Procedure that includes materials that "are material to the preparation of the

defense" is intentionally left behind, remaining subject to written request pursuant to new subdivision (c)(1). Further, subparagraph (F) now includes the words "electronically stored information" for purposes of clarity and completeness. As to subparagraph (H), its content combines that of subdivision (b)(2)(C) and (E) of the Maine Rules of Criminal Procedure as well as the last sentence in paragraph (2) of the Maine Rules of Criminal Procedure to enhance clarity and readability.

Fifth, subdivision (a)(3) carries over the content of subdivision (b)(3) of the Maine Rules of Criminal Procedure.

Sixth, subdivision (a)(4) has no equivalent in Rule 16 of the Maine Rules of Criminal Procedure. It addresses with specificity the manner of providing automatic discovery by the attorney for the State. The manner varies depending upon the nature of the item. Written materials, except as otherwise provided in new subdivision (b)(1) regarding initial appearance on a felony or arraignment on a misdemeanor, must be copied and then furnished. Copies of written materials may be provided in electronic format, for example, disk, thumb drive, or other secure electronic or digital product, to a willing recipient. Tangible objects must be made available to the defendant "at any reasonable time and in any reasonable manner to inspect, photograph, or have reasonable tests made." The existence of audio, video, motion pictures, photographic evidence, or electronically stored information must be disclosed to the defendant with automatic discovery. At the request of the defendant, where practicable, the attorney for the State must provide the defendant "an opportunity to obtain an electronic copy, at any reasonable time and in any reasonable manner." In circumstances in which the attorney for the State is unable to provide the defendant with that opportunity "because the technology makes such provision impracticable" or when copying is not legally permitted, the attorney for the State must then provide the defendant "a reasonable opportunity" to review such evidence.

Seventh, subdivision (b) has no equivalent in Rule 16 of the Maine Rules of Criminal Procedure other than paragraph (6) addressing a protective order. The first five paragraphs explain the time for providing automatic discovery by the attorney for the State. The "within a reasonable time" standard in subdivision (a)(1) of the Maine Rules of Criminal Procedure is not carried forward. Paragraph (1) requires that, at the time of initial appearance on a felony or arraignment on a misdemeanor, the attorney for the State produce and allow the defendant to review the "police report(s) and other documents used by the prosecutor in deciding to charge the defendant." Paragraph (2) requires that within 7 days after arraignment or entry of a written plea of "not guilty" to a

misdemeanor crime the attorney for the State provide all the information described in subdivision (a)(2), other than in subparagraph (A), in the manner dictated by subdivision (a)(4). Paragraph (3) requires that, in the event a dispositional conference is to take place before indictment for a felony, the attorney for the State provide all the information described in subdivision (a)(2), other than in subparagraph (A), "no later than 14 days before any dispositional conference that occurs before indictment" in the manner dictated by subdivision (a)(4). Paragraph (4) requires that the attorney for the State provide all the information described in subdivision (a)(2), other than in subparagraph (A), at the time of arraignment on a felony in the manner dictated by subdivision (a)(4). Paragraph (5) requires that, after timely discovery as required by subdivision (b)(1)-(4) the attorney for the State provide any additional automatic discovery material that comes within his or her "possession or control." This requirement parallels that in subdivisions (a)(2) and (b)(4) of the Maine Rules of Criminal Procedure. However, disclosure now must be made to the defendant "within 14 days thereafter." Paragraph (7) has no counterpart in Rule 16 of the Maine Rules of Criminal Procedure. It imposes upon a defendant, who in fact becomes aware of the existence of any automatic discovery material that the defendant wishes to review in order to prepare a defense and that should have but has not yet been provided by the attorney for the State, the affirmative obligation to "make a written request to the State for the material." The State, upon receipt of such written request, "must respond to the request, in writing, within 14 days."

Eighth, subdivision (c) addresses that portion of subdivision (b)(2)(A) of the Maine Rules of Criminal Procedure, not included within new subdivision (a)(2)(F), related to the listed items that "are material to the preparation of the defense." Subdivision (c)(1) permits a defendant to make a written request to have the State provide, other than materials the State is required by subdivision (a)(2) to automatically provide or work product, the listed items that "are material and relevant to the preparation of the defense." The word "material" in this context is not to be construed to mean only so-called "*Brady* material." *Brady v. Maryland,* 373 U.S. 83 (1963). Instead, "material" is used in its common dictionary sense of "necessary," keeping in mind the purposed and scope of discovery. See generally, Glassman, *Maine Practice: Rules of Criminal Procedure with Commentaries*, § 16.2 at 136 (1967). The word "relevant" is newly added and helps guard against fishing expeditions. Subdivision (c)(2) requires that the attorney for the State respond to a defendant's written request with a written response "within a reasonable time." Paragraph (2) lists 4 options regarding the State's response—namely, provide the requested material; notify the defendant that the requested material will be provided as soon as it can reasonably be obtained; notify the

defendant that the requested material is not within the State's possession or control; or notify the defendant that the State objects to the request. Subdivision (c)(2) also includes a continuing duty to notify the defendant of any additional similar materials within 14 days of them coming within the State's possession or control.

Ninth, subdivision (d), paragraphs (3) and (4) are the same in content as subdivision (c), paragraphs (2) and (3), respectively, of the Maine Rules of Criminal Procedure. New paragraph (1) of subdivision (d) parallels the content of paragraph (1) of subdivision (c) of the Maine Rules of Criminal Procedure but makes clear that a motion for a bill of particulars "may be entertained and granted by the court" only if the defendant "satisfies the court" both that "Discovery has been completed under this Rule" and "That such discovery is inadequate to establish a record upon which to plead double jeopardy, or to prepare an effective defense because further information is necessary respecting the charge stated in the charging instrument, or to avoid unfair prejudice." This latter requirement, like its parallel language in paragraph (1) of the Maine Rules of Criminal Procedure, stems from Maine case law. See, e.g., *State v. Wedge,* 322 A.2d 328, 330-31 (Me. 1974). New paragraph (1), like paragraph (1) of the Maine Rules of Criminal Procedure, provides that "[t]he bill of particulars may be amended at any time subject to such conditions as justice requires." New paragraph (2) of subdivision (d) has no counterpart in subdivision (c) of the Maine Rules of Criminal Procedure. It provides that in the event the attorney for the State notifies the defendant in writing that the State objects to the defendant's written discovery request pursuant to subdivision (c)(2)(D), the defendant may file a motion seeking a court order to obtain the additional discovery sought that is "material and relevant to the preparation of the defense." The State has 7 days within which to respond. The court may "discuss the motion at a dispositional conference [under Rule 18] and may rule on the motion with or without a hearing." New paragraph (5) of subdivision (d) has no counterpart in subdivision (c) of the Maine Rules of Criminal Procedure. Paragraph (5) requires that discovery in all homicide cases and, by order of the court, in cases involving forensic materials, be by way of a specific discovery order that will control the discovery process rather than the Rule's provisions.

Tenth, subdivision (e) parallels the content of subdivision (d) addressing sanctions for noncompliance, but as regards the sanction of "dismissing charges," adds the alternative of "without" prejudice to the existing "with" prejudice for clarity and completeness.

RULE 16A. DISCOVERY BY THE STATE

(a) Automatic Discovery. Notice of Intention to Introduce Expert Testimony as to the Defendant's Mental State. If a defendant intends to introduce expert testimony as to the defendant's mental state, the defendant shall, at least 7 days before the date set for the dispositional conference under Rule 18 or at such later time as the court may direct, serve a notice of such intention upon the attorney for the State and file a copy with the clerk of the Unified Criminal Docket. Mental state testimony includes culpable state of mind, mental disease or defect, belief as to self-defense, or any other mental state or condition of the defendant bearing upon the issue of criminal liability. The court may for cause shown allow late filing of the notice; if it does so, it may grant additional time to the parties to prepare for trial or may make such further order as may be appropriate. The notice is not admissible against the defendant.

(b) Discovery Upon Request.

(1) *Dispositional or Trial Documents and Tangible Objects*. Upon the written request of the attorney for the State, the defendant shall, at least 14 days before the date set for the dispositional conference under Rule18, permit the attorney for the State to inspect and copy or photograph or have reasonable tests made upon any book, paper, document, electronically stored information, photograph (including a motion picture and videotape), or tangible object that is within the defendant's possession or control and that the defendant intends to introduce as evidence in any proceeding.

(2) *Expert Witnesses*. Upon the written request of the attorney for the State, the defendant shall, at least 14 days before the date set for the dispositional conference under Rule 18, furnish the following to the attorney for the State:

(A) A statement containing the name and address of any expert witness whom the defendant intends to call in any proceeding; and

(B) A copy of any report or statement of an expert, including a report or results of physical or mental examinations and of scientific tests, experiments, or comparisons, that is within the defendant's possession or control and that the defendant intends to introduce as evidence in any proceeding.

(3) *Notice of Alibi*. Not later than 14 days before the date set for jury selection, the attorney for the State may serve upon the defendant or the

defendant's attorney a demand that the defendant serve a notice of alibi if the defendant intends to rely on such defense at the trial. The demand shall state the time and place that the attorney for the State proposes to establish at the trial as the time and place where the defendant participated in or committed the crime. If such a demand has been served, and if the defendant intends to rely on the defense of alibi, not more than 7 days after service of such demand, the defendant shall serve upon the attorney for the State and file a notice of alibi that states the place where the defendant claims to have been at the time stated in the demand and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. Within 7 days thereafter, the attorney for the State shall file and serve the names and addresses of the witnesses upon whom the State intends to rely to establish the defendant's presence at the time and place stated in the demand.

If the defendant fails to serve and file a notice of alibi after service of a demand, the court may take appropriate action. If the attorney for the State fails to serve and file a notice of witnesses, the court shall order compliance. The fact that a witness's name is on a notice furnished under this subdivision and that the witness is not called shall not be commented upon at trial.

(4) *Exception*: *Work Product*. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent they contain the mental impressions, conclusions, opinions, or legal theories of the attorney for the defendant.

(5) *Continuing Duty to Disclose*. If matter that would have been furnished to the attorney for the State under this subdivision comes within the control of the attorney for the defendant after the attorney for the State has had access to similar matter, the attorney for the defendant shall promptly so inform the attorney for the State.

(6) *Protective Order*. Upon motion of the defendant, and for good cause shown, the court may make any order that justice requires.

(c) Discovery Pursuant to Court Order.

(1) *Order for Preparation of Report by Expert Witness*. If an expert witness whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is

expected to testify, and a summary of the expert's opinions and the grounds for each opinion.

(2) *Order Permitting Discovery of the Person of the Defendant*.

(A) Upon motion and notice the court may order a defendant to

(i) Appear in a line-up;

(ii) Speak for identification by witnesses to a crime;

(iii) Be fingerprinted, palm printed, or foot printed;

(iv) Pose for photographs;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under the defendant's fingernails;

(vii) Permit the taking of samples of the defendant's biological materials, including but not limited to, blood, hair, saliva, fingernail clippings and materials obtainable by swab;

(viii) Provide specimens of the defendant's handwriting; and

(ix) Submit to a reasonable physical or medical inspection of the defendant's body.

(B) Reasonable notice of the time and place of any personal appearance of the defendant required for the foregoing purposes shall be given by the attorney for the State to the defendant and the defendant's attorney. Provision may be made for appearances for such purposes in an order by the court admitting the defendant to bail or providing for the defendant's release.

(C) Definition. For purposes of this Rule, a defendant is a person against whom a criminal pleading has been filed.

(d) Sanctions for Noncompliance. If the defendant fails to comply with this Rule, the court on motion of the attorney for the State or on its own motion may take appropriate action, which may include, but is not limited to, one or more

of the following: requiring the defendant to comply; granting the attorney for the State additional time or a continuance; relieving the attorney for the State from making a disclosure required by Rule 16; prohibiting the defendant from introducing specified evidence; and charging the attorney for the defendant with contempt of court.

Committee Advisory Note

The Rule parallels the content of Rule 16A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a), first sentence, the required notice respecting a defendant's intent to introduce expert testimony as to his or her mental state must now be served upon the attorney for the State and a copy filed with the clerk of the Unified Criminal Docket "at least 7 days before the date set for the dispositional conference under Rule 18 or at such later time as the court may direct" rather than "within the time provided for the filing of pretrial motions or at such later time as the court may direct."

Second, in subdivisions (a), (b)(1), (2), (3), (5), (c)(2)(B), and (d) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Third, the heading to paragraph (1) of subdivision (b) is changed from "*Documents and Tangible Objects*" to "*Dispositional or Trial Documents and Tangible Objects*" to better identify its new content.

Fourth, in subdivision (b)(1) the defendant must comply with the written request of the attorney for the State "at least 14 days before the date set for the dispositional conference under Rule 18" rather than "within a reasonable time." Further, the items specifically identified now include "electronically stored information" and parenthetically as to a photograph, a motion picture and videotape. Finally, the word "that" replaces the word "which" to reflect modern usage.

Fifth, in subdivision (b)(2) the notice respecting a defendant's intent to call an expert witness in response to the State's written request must furnish to the attorney for the State the required materials "at least 14 days before the date set for the dispositional conference under Rule 18" rather than "within a reasonable time." Further, the word "that" replaces the word "which" to reflect modern usage.

Sixth, in subdivision (b)(3), first sentence, service upon the defendant or the defendant's attorney by the attorney for the State of a demand that the defendant serve a notice of alibi if the defendant intends to rely on such defense at trial must now be made "[n]ot later than 14 days before the date set for jury selection" rather than "10 days before the date set for trial." The change to "14 days" from "10 days" reflects the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5. That same preference is also reflected in the change to "7 days" from "5 days" in the third and fourth sentences in the same paragraph. Further, the word "that" in the third sentence replaces the word "which" and the word "where" replaces the word "which" to reflect modern usage.

Seventh, in subdivision (b)(5) the sentence is rewritten to enhance clarity, and the word "possession" is omitted.

Eighth, in subdivision (b)(6) the word "that" replaces the word "which" to reflect modern usage.

RULE 17. SUBPOENA FOR ATTENDANCE OF WITNESSES

(a) For Attendance of Witnesses; Form; Issuance. A subpoena may be issued by the clerk under the seal of the court or by a member of the Maine Bar. It shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony at the place and during the time period specified therein. The time period shall not exceed the period covered by the trial list scheduling the case. The attorney for the subpoenaing party shall make arrangements to minimize the burden on the subpoenaed person. A member of the Maine Bar has the option in each case of either signing and issuing the subpoena as an officer of the court or instead having the clerk of any Unified Criminal Docket do so. In the latter circumstance, upon the request of the bar member, the clerk shall provide a subpoena, signed and sealed but otherwise in blank. The bar member shall fill in the blanks before it is served. Although a person representing him or herself may not be provided a subpoena in blank, that person has the right to secure the issuance of a subpoena by the clerk for obtaining favorable witnesses whose testimony is relevant and material.

(b) Indigent Defendants. A defendant determined indigent by the court pursuant to Rule 44(b) is entitled to subpoena an in-state witness without payment

of the witness fee, mileage, and cost of service of the subpoena. Such fees and costs shall be paid by the Maine Commission on Indigent Legal Services. A request to the sheriff for service shall be accompanied by a certificate of counsel that the defendant has been determined indigent. A defendant who is financially unable to pay the fees and costs to subpoena an out of state witness may move ex parte for an order dispensing with payment of fees and costs. The court shall grant the motion if it finds the defendant is unable to pay the fees and costs and that the presence of the witness is necessary to an adequate defense.

(c) For Production of Documentary Evidence and of Tangible Objects. A subpoena may also command the person to whom it is directed to produce at a reasonable time and place specified therein the books, papers, documents, or other tangible objects designated therein. Notice of the service of the subpoena and a copy of it shall be provided to opposing counsel or, when applicable, a unrepresented defendant, contemporaneously with service. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable, oppressive, or in violation of constitutional rights.

(d) Privileged or Protected Documentary Evidence. If a party or its attorney knows that a subpoena seeks the production of documentary evidence that may be protected from disclosure by a privilege, confidentiality protection, or privacy protection under federal law, Maine law (for example, requests for Department of Health and Human Services records pursuant to 22 M.R.S. § 4008(3)(B), so-called "Clifford Orders"), or the Maine Rules of Evidence, the party or its attorney shall file a motion in limine, pursuant to Rule 12, before serving the subpoena. The motion shall contain a statement setting forth (1) the particular documents sought by the subpoena with a reasonable degree of specificity of the information contained therein; (2) the efforts made by the moving party in procuring the information contained in the requested documents by other means; (3) that the moving party cannot properly prepare for trial without such production of the documents; and (4) that the requested information is likely to be admissible at trial. The motion in limine shall be accompanied by a copy of the yet unserved subpoena.

Upon receipt of the motion, the court shall make a preliminary determination that the moving party has sufficiently set forth the relevancy, admissibility, and specificity of the requested documents. If the motion fails to meet the minimum threshold of information required, the court may summarily deny the motion. If the motion satisfies the minimal threshold of information required, the court shall direct the clerk to set the matter for hearing and issue a notice of hearing. The

notice shall state the date and time of the hearing and direct the subpoenaed individual or entity from whom the documentary evidence is sought to submit the documentary evidence subject to the subpoena for *in camera* review by the court or to adequately explain in writing any reasons for a failure to submit the documentary evidence for *in camera* review. Following the clerk's issuance of a notice, the party seeking production shall serve the subpoena, the motion, and the notice on the subpoenaed individual or entity from whom the documentary evidence is sought in accordance with subdivision (e).

Upon receipt of the subpoena, the motion and the notice, the subpoenaed individual or entity to whom the subpoena is directed shall either submit the documentary evidence subject to the subpoena for *in camera* review by the court or provide in writing reasons for the failure to submit the documentary evidence for *in camera* review before the date of the hearing. After the hearing, the court may issue any order necessary to protect any party's or nonparty's privileges, confidentiality protections, or privacy protections under federal law, Maine law, or the Maine Rules of Evidence. A party or nonparty that may assert a privilege, confidentiality protection, or privacy protection may waive the right to a hearing and any applicable privileges or protections by notifying the court in writing that the party or nonparty is waiving any applicable privileges or protections.

(e) Service. A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and, except in the case of a person subpoenaed on behalf of the State or a person subpoenaed on behalf of an indigent defendant pursuant to subdivision (b), by tendering to the person the fee for one day's attendance and mileage allowed by law.

(f) Place of Service.

(1) *In State*. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Maine.

(2) *Out of State*. A subpoena directed to a witness outside the State of Maine shall issue under the circumstances and in the manner and be served as provided in the "Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings."

(g) For Taking Deposition; Place of Examination.

(1) *Issuance*. An order to take a deposition authorizes the issuance by the clerk of the court of subpoenas for the persons named or described therein.

(2) *Place*. A resident of this state shall not be required to travel to attend an examination outside the county where the resident resides, or is employed, or transacts business in person, or a distance of more than 50 miles one way, whichever is greater, unless the court otherwise orders. A nonresident of the state may be required to attend only in the county wherein the nonresident is served with a subpoena, or within 50 miles from the place of service, or at such other convenient place as is fixed by order of court.

(h) Enforcement of Subpoena. If a person fails to obey a subpoena served upon that person, the court may issue a warrant or order of arrest.

(i) Grand Jury Proceedings. This Rule does not apply to a grand jury proceeding except as to the form, issuance, and service of a grand jury subpoena; sanction for noncompliance; and the rights of a subpoenaed nonparty.

Committee Advisory Note

The Rule parallels the content of Rule 17 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the amendment modifies Rule 17, subdivision (a) in three respects. First, language is added to make clear that a member of the Maine Bar always has the option of either signing and issuing the subpoena as an officer of the court or instead having the clerk of any Unified Criminal Docket do so. In the latter circumstance, upon the request of the bar member, the clerk is required to provide a subpoena, signed and sealed but otherwise in blank. It is left to the requesting bar member to then complete the subpoena before service. Second, language is added to make clear that a bar member requesting a clerk-provided subpoena may obtain it from any Unified Criminal Docket clerk. Third, in the last sentence, the words "him or herself" replace the word "themselves" as a matter of word choice.

Second, in subdivision (b), the two separate paragraphs are combined into a single paragraph.

Third, in subdivision (c), the word "unrepresented" replaces the word "pro se" as a matter of word choice.

Fourth, in subdivision (d), language is added to identify with particularity what a party seeking to enforce a subpoena must show preliminarily to the court in order to avoid the motion in limine being summarily quashed. The test imposed reflects Maine case law. *State v. Marroquin-Aldana,* 2014 ME 47, ¶ 34, 89 A.3d 519; *State v. Watson,* 1999 ME 41, ¶ 6, 726 A.2d 214. Further, because a motion seeking to enforce a subpoena for Department of Health and Human Services records, pursuant to 22 M.R.S. § 4008(3)(B) (a so-called "Clifford Order"), is often sought, it is added as an example.

Fifth, a new subdivision (i) is added to eliminate any potential confusion as to the applicability of the Rule to a grand jury subpoena. A prosecutor from the Office of the Attorney General or a district attorney's office is statutorily empowered to present evidence to a grand jury (15 M.R.S. § 1256) and the compulsory subpoena process is a concomitant power necessary for the attendance of needed witnesses, documentary evidence, or tangible objects before the grand jury. Both powers conferred are fundamental to the operation of the grand jury process and are inherent in Rule 6. However, unlike proceedings generally to which Rule 17 applies, a grand jury proceeding is not a judicial proceeding and is nonadversarial because there is no participating adverse party. See 1 Cluchey & Seitzinger, *Maine Criminal Practice,* § 17.1 at IV-122 (Gardiner ed. 1995). As a consequence, those portions of the Rule addressing procedure relating to an adverse party are not relevant. New subdivision (i) makes it clear that those portions have no application to a grand jury subpoena.

RULE 17A. SUBPOENA FOR PRODUCTION OF DOCUMENTARY EVIDENCE OR TANGIBLE OBJECTS BY A NONPARTY

(a) Subpoena to Produce Documentary Evidence or Tangible Objects. A party may serve a subpoena on a nonparty commanding the nonparty to produce documentary evidence or tangible objects at the time and place specified therein. The time specified shall be not less than 14 days, unless a shorter time is ordered by the court. The place specified shall not impose an undue burden or expense upon the nonparty. Documentary evidence includes, but is not limited to, electronically stored information, books, papers, photographs, and videos. A subpoena may be issued by the clerk under the seal of the court or by a member of the Maine Bar. A member of the Maine Bar has the option in each case of either signing and issuing the subpoena as an officer of the court or instead having the

clerk of any Unified Criminal Docket do so. In the latter circumstance, upon the request of the bar member, the clerk shall provide a subpoena, signed and sealed but otherwise in blank. The bar member shall fill in the blanks before it is served. An unrepresented defendant may be provided a subpoena completed by the clerk. A member of the Maine Bar may be provided a subpoena in blank. The text of subdivisions (d), (e) and (f) of this Rule shall be contained in, or appended to, the subpoena.

(b) Service. A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named. A defendant determined indigent by the court pursuant to Rule 44(b) is entitled to service within the state without payment of the cost. Such cost shall be paid by the Maine Commission on Indigent Legal Services. A request to the sheriff for service shall be accompanied by a certificate of counsel that the defendant has been determined indigent.

(c) Notice to Adverse Party. Unless otherwise provided by statute notice of the service of the subpoena and a copy thereof shall be provided to opposing counsel or, when applicable, an unrepresented defendant contemporaneously with service.

(d) Motion to Quash or Modify Subpoena. A party or the subpoenaed nonparty or a person whose rights are potentially affected by the subpoena may move to quash or modify the subpoena.

The court may quash or modify the subpoena if compliance would be unreasonable, oppressive, or in violation of constitutional rights.

(e) Sanction for Noncompliance. If the subpoenaed nonparty fails to obey the subpoena, the court shall order an appropriate sanction, which may include a warrant or order of arrest.

(f) Privileged or Protected Documentary Evidence. If a party or the party's attorney knows that a subpoena seeks the production of documentary evidence that may be protected from disclosure by a privilege, confidentiality protection, or privacy protection under federal law, Maine law (for example, requests for Department of Health and Human Services records pursuant to 22 M.R.S. § 4008(3)(B), so-called "Clifford Orders"), or the Maine Rules of Evidence, the party or its attorney shall file a motion in limine, pursuant to Rule 12, before

serving the subpoena. The motion shall contain a statement setting forth (1) the particular documents sought by the subpoena with a reasonable degree of specificity of the information contained therein; (2) the efforts made by the moving party in procuring the information contained in the requested documents by other means; (3) that the moving party cannot properly prepare for trial without such production of the documents; and (4) that the requested information is likely to be admissible at trial. The motion in limine shall be accompanied by a copy of the yet unserved subpoena.

Upon receipt of the motion, the court shall make a preliminary determination that the moving party has sufficiently set forth the relevancy, admissibility, and specificity of the requested documents. If the motion fails to meet the minimum threshold of information required, the court may summarily deny the motion. If the motion satisfies the minimal threshold of information required, the court shall direct the clerk to set the matter for hearing and issue a notice of hearing. The notice shall state the date and time of the hearing and direct the subpoenaed individual or entity from whom the documentary evidence is sought to submit the documentary evidence subject to the subpoena for *in camera* review by the court or to adequately explain in writing any reasons for a failure to submit the documentary evidence for *in camera* review. Following the clerk's issuance of a notice, the party seeking production shall serve the subpoena, the motion, and the notice on the subpoenaed individual or entity from whom the documentary evidence is sought in accordance with subdivision (b).

Upon receipt of the subpoena, the motion and the notice, the subpoenaed individual or entity to whom the subpoena is directed shall either submit the documentary evidence subject to the subpoena for *in camera* review by the court or provide in writing reasons for the failure to submit the documentary evidence for *in camera* review before the date of the hearing. After the hearing, the court may issue any order necessary to protect any party's or nonparty's privileges, confidentiality protections, or privacy protections under federal law, Maine law, or the Maine Rules of Evidence. A party or nonparty that may assert a privilege, confidentiality protection, or privacy protection may waive the right to a hearing and any applicable privileges or protections by notifying the court in writing that the party or nonparty is waiving any applicable privileges or protections.

(g) Grand Jury Proceedings. This Rule does not apply to a grand jury proceeding except as to the form, issuance, and service of a grand jury subpoena; sanction for noncompliance; and the rights of a subpoenaed nonparty.

Committee Advisory Note

The Rule parallels the content of Rule 18 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, because new Rule 18 of the Maine Rules of Unified Criminal Procedure addresses the dispositional conference, the content of Rule 18 of the Maine Rules of Criminal Procedure is now contained in this Rule 17A.

Second, additional clarifying language is added to subdivision (a). See Committee Advisory Note to M.R.U. Crim. P. 17(a).

Third, in subdivisions (a) and (c) the word "unrepresented" replaces the word "pro se" as a matter of word choice.

Fourth, in subdivision (b) the capitalized letter "s" in the word "state" is changed to lower case because the word "state" in this context is not referring to a governmental actor or a party.

Fifth, in subdivision (f) the language changes mirror those in Rule 17(d). See Committee Advisory Note to M.R.U. Crim. P. 17(d).

Sixth, subdivision (g) mirrors Rule 17(i). See Committee Advisory Note to M.R.U. Crim. P. 17(i).

RULE 18. DISPOSITIONAL CONFERENCE

(a) Appearance required. The defendant and defendant's counsel, if any, shall appear at the dispositional conference. The State shall be represented at the dispositional conference by an attorney who has full authority to make decisions regarding disposition of, and sentencing recommendations regarding, the charges against the defendant.

(b) Participation. The court shall have broad discretion in the conduct of the dispositional conference. Counsel and unrepresented defendants must be prepared to engage in meaningful discussion regarding all aspects of the case with a view toward reaching an appropriate resolution. The court may participate in such discussions and may facilitate a plea agreement by suggesting or addressing a specific aspect of the matters under consideration.

(c) Content of Discussions Inadmissible. Except when relevant to (1) the resolution of an ineffective assistance of counsel claim asserted by the participating defendant or (2) the enforcement or alleged violation of a plea agreement, including sentencing, evidence of conduct or statements made during the dispositional conference is not admissible for any purpose.

(d) Agreement; Plea. If the parties reach a plea agreement, the court shall take the plea in open court or schedule the plea for a later time.

(e) No Agreement; Subsequent Proceedings. If the parties do not reach a plea agreement, the matter shall be set for jury trial, unless the defendant waives the defendant's right to a trial by jury. If the defendant waives the right to a trial by jury pursuant to Rule 23(a), the matter shall be set for a jury-waived trial. If any criminal charge discussed in a dispositional conference is accompanied by a civil violation triable of right by a jury, and the civil matter is not resolved at the dispositional conference, the civil matter shall be set for a jury-waived trial, unless the defendant files a demand for a jury trial and pays the $300 jury fee no later than 7 days after the dispositional conference, pursuant to M.R. Civ. P. 38.

(f) No Agreement; Inquiry Regarding Indictment. If the parties fail to reach a plea agreement in a case involving a complaint or information that charges at least one Class C or higher crime, the court shall call upon the defendant to elect whether to waive the right to have the matter presented to the grand jury and to be prosecuted by indictment, and to proceed to trial upon the complaint or information. If indictment is not waived, the court shall schedule the matter for arraignment upon the indictment after the next term of the grand jury.

Committee Advisory Note

The Rule is entirely new and addresses the "dispositional conference." Rule 18 of the Maine Rules of Criminal Procedure, addressing a subpoena for production of documentary evidence or tangible objects by a nonparty, remains part of the new unified Rules but is redesignated "17A."

New Rule 18 is expressly designed to encourage the parties to reach an appropriate resolution of the case. Subdivision (a) requires the defendant, the defendant's counsel, if any, and the attorney for the State to appear at the dispositional conference. The attorney for the State must have "full authority to make decisions regarding disposition of, and sentencing recommendations regarding, the charges against the defendant." Subdivision (b) requires counsel

and unrepresented defendants to appear "prepared to engage in meaningful discussion regarding all aspects of the case with a view toward reaching an appropriate resolution." And unlike Rule 11A(a) of the Maine Rules of Criminal Procedure, which conditions the court's participation "at the request of or with the agreement of the parties," the court has "broad discretion in the conduct of the dispositional conference" and may, without the request of or the agreement of the parties, participate in the meaningful discussions and may "facilitate a plea agreement by suggesting or addressing a specific aspect of the matters under consideration." Subdivision (c) ensures that "evidence of content or statements made during the dispositional conference is not admissible for any purpose" other than "when relevant to . . . the resolution of an ineffective assistance of counsel claim asserted by the participating defendant" or to "the enforcement or alleged violation of a plea agreement, including sentencing." Subdivision (d) provides that if a plea agreement is reached by the parties, "the court shall take the plea in open court or schedule the plea for a later time."

If a plea agreement is not reached by the parties pursuant to the above-described procedure, subdivisions (e) and (f) address waiver of jury trial and, when relevant, election as to the indictment process, respectively. Subdivision (e), following the mandate of Rule 23(a), requires that the matter be set for jury trial unless that right is waived by the defendant, in which case the matter must be set for a jury-waived trial. The subdivision also addresses subsequent proceedings for a civil matter if discussed in the dispositional conference but not resolved, requiring the civil matter to be set for a jury-waived trial unless the defendant "files a demand for a jury trial and pays the $300 jury fee no later than 7 days after the dispositional conference, pursuant to M.R. Civ. P. 38." Subdivision (f) requires the court, in the event the case involves a complaint or information that charges at least one Class C or higher crime, to call upon the defendant to elect whether to waive indictment (pursuant to Rule 7(b)) and to proceed to trial upon the complaint or information or instead not to waive. If the defendant elects not to waive the court must "schedule the matter for arraignment upon the indictment after the next term of the grand jury."

RULES 19 AND 20. [RESERVED]

V. TRIAL

RULE 21. PLACE OF TRIAL

(a) Venue. The trial shall be in the county in which the crime was allegedly committed, except as otherwise provided by law.

(b) Change of Venue.

(1) *Upon Motion*. The court upon motion of the defendant shall transfer the proceeding as to the defendant to another county if the court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county. The motion may be made only before the jury is impaneled or, where trial is by the court, before any evidence is received.

(2) *By Consent*. With the consent of the defendant and the attorney for the State the court may transfer a proceeding to another county.

(3) *Without Consent*. Upon the court's own motion, the court may, for purposes of sound judicial administration, transfer any proceeding to a location that is both in an adjoining county and in the vicinity of where the crime was committed.

(4) *Crime Committed in Two or More Counties*. The court upon motion of the defendant shall transfer the proceeding as to the defendant to another county if it appears from the indictment or information or from a bill of particulars that the crime was committed in more than one county and if the court is satisfied that in the interest of justice the proceedings should be transferred to another county in which the commission of the crime is charged. When two or more crimes are charged against the defendant, the court may upon motion of the defendant and in the interest of justice transfer all or part of the counts if any one of the counts that is transferred charges a crime committed in the county to which the transfer is ordered.

(5) *Proceedings on Change of Venue*. If the defendant is in custody, when a change of venue is ordered, the defendant shall be delivered to the custody of the sheriff of the county to which the proceeding is transferred at an appropriate time

as indicated by the court. The clerk shall transmit to the clerk of the court to which a proceeding is transferred all papers in the proceeding or certified copies thereof and any bail taken and the prosecution shall continue in that county.

Committee Advisory Note

The Rule parallels the content of Rule 21 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, subdivision (a) is rewritten to eliminate the separate treatment of the Superior Court and the District Court in paragraphs (1) and (2), and to retain only the content (excluding the heading) of paragraph (1). The word "allegedly" is added.

Second, in subdivision (b)(1), (2), and (5) the references to "or division" are omitted.

Third, in subdivision (b)(2) the letter "s" is capitalized in the word "state" because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Fourth, subdivision (b)(3) is rewritten to eliminate the separate treatment of the Superior Court and the District Court in paragraphs (A) and (B) and to retain only the content (excluding the heading) of paragraph (A).

Fifth, in subdivision (b)(4) the word "that" replaces the word "which" located after the word "counts" and before the word "is" to reflect modern usage.

Sixth, in subdivision (b)(5) the word "court" replaces the words "justice or judge." See Committee Advisory Note to M.R.U. Crim. P. 57(d).

RULE 22. [RESERVED]

RULE 23. TRIAL BY JURY OR BY THE COURT

(a) Trial by Jury; Waiver. All cases in the Unified Criminal Docket shall proceed to jury trial unless the defendant, with the approval of the court, waives a jury trial in writing signed by the defendant in open court, but the absence of a writing in such a case shall not be conclusive evidence of an invalid waiver.

(b) Jury of Fewer Than 12. Juries shall be of 12, but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number fewer than 12.

(c) Trial Without a Jury. In a case tried before the court without a jury, the court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Committee Advisory Note

The Rule parallels the content of Rule 23 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, subdivision (a) is entirely rewritten. The former procedure requiring a timely demand for a jury trial by a defendant on a charge of a Class D or Class E crime under Rule 22 of the Maine Rules of Criminal Procedure is abandoned (Rule 22 is not carried forward) and subdivision (a) now makes it clear that, irrespective of the class of the crime charged, a defendant is automatically entitled to a jury trial in "[a]ll cases in the Unified Criminal Docket." Further, in subdivision (a) the procedure for waiver of a jury trial by a defendant is changed to require not only that the waiver be in writing, but that it be signed by the defendant in open court as well. This procedure, as modified, is also applied in the waiver of indictment context. See Committee Advisory Note to M.R.U. Crim. P. 7(b).

Second, in subdivision (c) the words "before the court" are added after the word "tried" and before the word "without" to enhance clarity. Further, the procedure respecting findings of fact are simplified.

RULE 24. TRIAL JURORS

(a) Examination of Jurors. The court shall conduct the initial examination of the prospective jurors unless the court, in its discretion, elects to allow the parties or their attorneys to conduct an initial examination, either directly or indirectly through the court. If the court conducts the initial examination, when that examination is completed, the court, in its discretion, may allow the parties or their attorneys to address additional questions to the prospective jurors, either directly or indirectly through the court, on any subject that has not been fully covered in the court's examination and that is germane to the jurors' qualifications.

(b) Challenges for Cause. Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the examination.

(c) Peremptory Challenges.

(1) *Manner of Exercise*. Peremptory challenges shall be exercised by striking out the name of the juror challenged on a list of the drawn prospective jurors prepared by the clerk. The court may permit counsel to exercise a peremptory challenge of a juror immediately following the examination of that juror.

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

(d) Alternate Jurors. The court may direct that not more than 4 jurors in addition to the regular panel be called and impaneled to sit as alternate jurors as provided by law. The manner and order of exercising peremptory challenges to alternate jurors shall be the same as provided for peremptory challenges of regular jurors. In all criminal prosecutions, each side shall be entitled to one peremptory challenge of the alternate jurors. If there is more than one defendant, the court may allow additional peremptory challenges to the defendants and the State, permit the additional challenges by the defendants to be exercised separately or jointly, and determine the order of the challenges.

(e) Sequestration of the Jury. In all jury trials the jury shall be allowed to separate until it retires to consider its verdict, unless the court finds it necessary to order sequestration of the jury to ensure the fairness of the trial. Upon retiring to consider its verdict, the jury shall be sequestered, but it may be allowed to separate in the discretion of the court.

(f) Note-Taking by Jurors. The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

Committee Advisory Note

The Rule parallels the content of Rule 24 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the procedure in subdivision (a) respecting the examination of prospective jurors is changed to require the court to conduct the initial examination of the prospective jurors unless, as an exercise of discretion, the court allows the parties or their attorneys to do so. Further, if the court conducts the initial examination, additional questions by the parties or their attorneys, addressed either directly or indirectly through the court, may only address a subject not fully covered in the court's examination that is germane to the jurors' qualifications.

Second, in subdivision (c)(2) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

RULE 25. DISABILITY OF A JUSTICE OR JUDGE

If by reason of death, resignation, removal, sickness, or other disability, a justice or judge before whom a defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt any other justice or judge assigned thereto by the Chief Justice of the Superior Court or the Chief Judge of the District Court may perform those duties; but if such other justice or judge is satisfied that he or she cannot perform those duties because the justice or judge did not preside at the trial or for any other reason, the justice or judge may in the exercise of discretion grant a new trial.

Committee Advisory Note

The Rule mirrors the content of Rule 25 of the Maine Rules of Criminal Procedure.

RULE 25A. SCHEDULING AND CONTINUANCES

(a) Definitions.

(1) "Continuance Order" is defined as an order entered by the court that effectively removes a case from a trial list or date certain court event in response to a written motion. Absent the entry of a continuance order, a case is subject to being called for trial throughout the trial list period or for a court event on the designated date certain.

(2) "Effectively removes a case from a trial list" includes the unavailability for essential dates or when the number of days necessary for trial of the case, based on the parties' good faith estimate of the time for trial, is more than the difference between (A) the number of days remaining on a trial list at the time a motion for a continuance or a request for protection is made, and (B) the number of days sought in the motion for a continuance or the request for protection.

(3) "Essential Dates" include jury selection days, case management days, and other dates essential to the completion of trial on the list at issue.

(4) "Request for Protection" is defined as an informal, nondocketed written request that a case not be called for trial on one or more specified days of a trial list and that, if allowed, would not effectively remove a case from a trial list. A request for protection shall only be acted upon by a judge and shall not take the place of or be treated as a motion for continuance.

(5) "Scheduled" is defined as follows: (A) For trial list cases, "scheduled" means a case has been assigned to a trial list as that term is defined in this Rule; (B) for all other cases, "scheduled" means that a date certain has been identified for a hearing or trial.

(6) "Trial list" means the list of a group of cases assigned to an actual, discrete period of time. A trial list is not simply a list of cases ready for trial. Rather, it is a list for a trial session that has beginning and ending dates, consists

primarily of consecutive court days, and realistically exposes all of the assigned cases to trial.

(b) Assignment for Trial.

(1) *Jury Trial List*. In those actions set for a jury trial, the clerk of the Unified Criminal Docket shall maintain a Jury Trial List. Scheduling of actions for trial from the lists shall be at the direction of the court.

(2) *Nonjury Trial List*. The court may by order provide for the setting of cases for nonjury trial upon the calendar. All actions, except those otherwise governed by statute or court orders shall be in order for trial at a time set by the court on such notice as it deems reasonable, but not less than 14 days after the scheduled completion of any discovery and expiration of time for filing any motions.

(c) Continuances. A motion for a continuance order shall be made immediately after the cause or ground becomes known. The motion must specify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, and (3) whether the motion is opposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be given immediately to all other parties. The fact that a motion is unopposed does not assure that the requested relief will be granted. Continuances should only be granted for substantial reasons.

(d) Protections. A request for a protection from a trial list shall be made immediately after the cause or ground becomes known, and shall be submitted in a written Uniform Request for Protection Form or in a writing containing substantially the same information.

Committee Advisory Note

The Rule parallels the content of Rule 25A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a)(1) the words "the court" replace the words "a judge." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d).

Second, in subdivision (a)(4) the word "that" replaces the word "which" to reflect modern usage.

RULE 26. EVIDENCE

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules, the Maine Rules of Evidence, or other rules adopted by the Supreme Judicial Court.

(b) Examination of Witnesses. The examination and cross-examination of each witness shall be conducted by one counsel only on each side, except by special leave of court, and counsel shall stand while so examining or cross-examining unless the court otherwise permits. Any re-examination of a witness shall be limited to matters brought out in the last examination by the adverse party, except by special leave of court.

(c) Order of Evidence. A party who has rested a case cannot thereafter produce further evidence except in rebuttal unless by leave of court.

(d) Attorney Not to Be Witness. No attorney shall be permitted to be a witness for his or her client before a jury without special permission of the court.

(e) Allegation of Prior Conviction; Procedure. In a trial to a jury in which the prior conviction is for a crime that is identical to the current principal crime or is sufficiently similar that knowledge of the fact that the defendant has been convicted of the prior crime may, in the determination of the presiding justice, unduly influence the ability of the jury to determine guilt fairly, that portion of the charge alleging the prior conviction shall not be read to a jury until after conviction of the principal crime, nor shall the defendant be tried on the issue of whether he or she was previously convicted until after conviction of the principal crime, unless the prior conviction has been admitted into evidence for another reason. The jury that found the defendant guilty of the current principal crime shall determine whether the defendant was convicted of the prior alleged crime unless that jury has been discharged before the filing of an amended indictment, if required to charge the prior conviction.

(f) Marking of Exhibits; Insurance for Valuable Exhibits. The parties shall mark their exhibits before trial or hearing or during a recess. A party who offers a valuable exhibit shall be responsible for procuring insurance for it.

(g) Election by Unrepresented Defendant. In a trial involving an unrepresented defendant, the court shall (A) advise an unrepresented defendant, out of the presence of the jury, of the necessity of choosing between exercising the right to remain silent and exercising the right to testify; (B) ensure that the defendant understands these alternative rights; and (C) give the defendant the opportunity to make an election between them. If the defendant elects to testify, the court shall advise the defendant how and when the right to testify may be exercised.

Committee Advisory Note

The Rule parallels the content of Rule 26 of the Maine Rules of Criminal Procedure except that in subdivisions (e) and (f) the word "before" replaces the phrase "prior to" to reflect modern usage.

RULE 27. RECORDING AND TRANSCRIPTION OF PROCEEDINGS

(a) Proceedings Recorded. All proceedings shall be electronically recorded or taken down by a by a court reporter. All transcripts of trial court proceedings held in the Unified Criminal Docket shall be reproduced in accordance with M.R. Civ. P. 5(i)(2).

(b) Preservation of Record. In all other respects, Rule 76H of the Maine Rules of Civil Procedure and Recording of Trial Court Proceedings, Me. Admin. Order JB-12-1, as amended, govern the procedure for electronic recording in criminal cases, except that all recordings and records pertaining to a criminal proceeding shall be retained until the expiration of any sentence that is longer than the retention period provided for such recordings and records in civil cases by Rule 76H(e) of the Maine Rules of Civil Procedure.

(c) Expenses. Upon appropriate motion, the court shall direct that the State bear any expense for listening to recordings by, or preparation of a transcript for, indigent defendants who qualify for the assignment of counsel pursuant to Rule 44.

Committee Advisory Note

The Rule parallels the content of Rule 27 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a), the words "in the District Court or the Superior Court" are omitted from the first sentence and the words "Unified Criminal

Docket" replace the words "District Court or the Superior Court" in the second sentence.

Second, in subdivision (b), a reference to "Recording of Trial Court Proceedings, Me. Admin. Order JB-12-1, as amended" is added.

Third, in subdivision (c) the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

RULE 28. COURT-APPOINTED INTERPRETERS AND TRANSLATORS

The court may provide, or when required by administrative order or statute shall provide, to individuals eligible to receive court-appointed interpretation or translation services, an interpreter or translator and determine the reasonable compensation for the service when funded by the court. An interpreter or translator shall be appropriately sworn.

Committee Advisory Note

The Rule mirrors the content of Rule 28 of the Maine Rules of Criminal Procedure.

RULE 29. MOTION FOR ACQUITTAL

(a) Motion for Judgment of Acquittal. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more crimes charged in the indictment, information, or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such crime or crimes. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right. If a motion for judgment of acquittal is made at the close of all evidence, the court may reserve the decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(b) Motion After Discharge of Jury. If the jury returns a verdict of guilty, or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 14 days after the jury is discharged or within such further time as the court may fix during the 14 day period. If a

verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made before the submission of the case to the jury. A motion for new trial shall be deemed to include a motion for judgment of acquittal as an alternative.

Committee Advisory Note

The Rule parallels the content of Rule 29 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the letter "s" in the word "state" is capitalized because it is referring to the "State" as a party.

Second, in subdivision (b) the 10-day time period is changed to 14 days to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

Third, in subdivision (b) the word "before" replaces the phrase "prior to" to reflect modern usage.

RULE 30. ARGUMENT OF COUNSEL; INSTRUCTIONS TO JURY

(a) Time for Argument. After the evidence is closed, argument to the jury or to the court shall be permitted. The time for argument, which shall be fixed and definite, shall be set by the court before argument.

The attorney for the State shall argue first. The attorney for each defendant shall then argue. The attorney for the State shall then be allowed time for rebuttal.

(b) Instructions to Jury. At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to the other parties. The court shall inform counsel of its proposed action upon the requests before their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to

consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing and presence of the jury.

The court, at its election, may provide written instructions to the jury covering all or a part of what is orally provided.

Committee Advisory Note

The Rule parallels the content of Rule 30 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a) and (b) the word "before" replaces the phrase "prior to" to reflect modern usage.

Second, in subdivision (a) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

RULE 31. JURY VERDICT

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the court in open court, in the presence of the defendant or defendants.

(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberation may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Poll of Jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Verdict on Nonbusiness Days and After Hours. The court may receive a verdict on any nonbusiness day or outside business hours, from a jury that commenced its deliberations on a regular business day.

Committee Advisory Note

The Rule parallels the content of Rule 31 of the Maine Rules of Criminal Procedure except that in subdivision (a) the word "court" replaces the word "justice."

VI. JUDGMENT

RULE 32. SENTENCE AND JUDGMENT

(a) Sentence.

(1) *Timing*. Sentence shall be imposed without unreasonable delay, provided, however, that the court may suspend the execution thereof to a date certain or determinable. In circumstances other than addressed in Rule 38, if a stay of execution has been ordered and if at the conclusion of the stay the defendant fails to surrender into the custody of the sheriff named in the commitment order, upon the request of the named sheriff or the attorney for the State, or by direction of the court, the clerk shall issue a warrant for the defendant's arrest.

(2) *Allocution on a Conviction*. Before imposing sentence on a Class C or higher crime, the court shall address the defendant personally and inquire if the defendant desires to be heard prior to the imposition of a sentence. In a Class D or E crime the court may address the defendant and inquire if the defendant desires to be heard prior to the imposition of sentence. The defendant may be heard personally or by counsel or both. Failure of the court to so address the defendant shall not affect the legality of the sentence unless the defendant shows that he or she has been prejudiced thereby.

(3) *Statement of Reasons for Sentence of Imprisonment of One Year or More*. If the court imposes a sentence of one year or more, it shall set forth on the record the reasons for the sentence. This requirement shall also apply in cases in which there has been a plea agreement. In a case in which there is a sentence of less than one year's imprisonment, the court may set forth on the record its reasons for the sentence. Noncompliance with this requirement shall not affect the legality of the sentence; however, it may affect appellate review by the Law Court.

(b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings and the adjudication, sentence, the defendant's date of birth and, when known, the defendant's State Identification Number. If the defendant is

found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. A judgment of conviction shall be signed by the court and entered by the clerk of the Unified Criminal Docket.

(c) Presentence Investigation and Report.

(1) *When Made*. The court may in its discretion direct the Department of Corrections to make a presentence investigation and report to the court before the imposition of sentence. The report shall be in writing unless the court directs that it be orally presented. Whether written or oral, its content may not be disclosed to anyone, including the court, until the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) *Content of Report*. Unless the court directs otherwise, the report of the presentence investigation shall contain any prior criminal record of the defendant and such information on the defendant's characteristics, the defendant's financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in the correctional treatment of the defendant, and such other information as may be required by the court, including, for example, information relative to the imposition of probation or supervised release.

(3) *Access to Written Presentence Report and Right to Comment*.

(A) In any case in which the court has ordered a written presentence report, in order to ensure that the defendant or, if the defendant is represented by counsel, both the defendant and the defendant's counsel are accorded an opportunity to examine the content of the report, sentence shall not be imposed until at least 48 hours after the report is filed with the clerk of the Unified Criminal Docket, unless this time period is waived by the defendant. Consent of the defendant, if given, shall be made a part of the record. The clerk shall mail a date-stamped copy of the written presentence report to the defendant or, if represented by counsel, to counsel and note the mailing in the Unified Criminal Docket. Before imposing sentence, the court shall afford the defendant, counsel for the defendant, or both an opportunity to comment upon the presentence report as well as upon any information from confidential sources withheld from the written presentence report and presented at the time of sentencing.

(B) *Access to Written Presentence Report by the State.* At the time the clerk mails a date-stamped copy of the written presentence report pursuant to

(A) above, the clerk shall mail a date-stamped copy of that report to the attorney for the State and note the mailing in the Unified Criminal Docket.

(4) *Opportunity to Hear and Comment Upon Information Presented in an Oral Presentence Report*. In any case in which the court has ordered an oral presentence report, before imposing sentence, the court shall afford the defendant, counsel for the defendant, or both an opportunity to both hear and comment upon any information presented as part of the oral pre-sentence report.

(d) Withdrawal of Plea of Guilty or Nolo Contendere. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed.

Committee Advisory Note

The Rule parallels the content of Rule 32 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a)(1) and (c)(3)(B) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, in subdivision (b) the word "court" replaces the words "justice or judge." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d). Further, the words "of the Unified Criminal Docket' are added following the word "clerk" for clarity.

Third, the heading to subdivision (c) is changed from "**Pre-sentence Investigation**" to "**Presentence Investigation and Report**" to better identify the subdivision's content.

Fourth, in subdivision (c)(1) the words "Department of Corrections" replaces "State Division of Probation and Parole" because that division no longer exists and its responsibilities now lie with the Commissioner of Corrections pursuant to 34-A M.R.S. § 5402(2)(D). Further, a new sentence is added in subdivision (c)(1) clarifying that unless the court expressly directs that the presentence report be orally presented the report must be in writing. Still further, the words "or the granting of probation" are not carried forward in new subdivision (c)(1) because it incorrectly suggests that probation is a freestanding alternative to a sentence. Finally, subdivision (c)(1) is changed to make it clear that, whether a

presentence report is to be submitted in writing or orally, its content may not be disclosed, even to the court, before the court has accepted a plea of guilty or nolo contendere from the defendant or the defendant has been found guilty.

Fifth, in subdivision (c)(2), the words "Unless the court directs otherwise" are added to make clear that the content of a presentence report is under the court's direction and control. Further, in subdivision (c)(2) the words "including, for example, information relative to the imposition of probation or supervised release" are added as examples of other information a court might want to be included in the presentence report.

Sixth, the heading to subdivision (c)(3) is changed from "*Access to Written Pre-sentence Report*" to "*Access to Written Presentence Report and Right to Comment*" to better identify the paragraphs' content.

Seventh, in subdivision (c)(3)(A) and (B) the words "Unified Criminal Docket" replace the words "of the court" and "criminal docket" for clarity.

RULE 33. NEW TRIAL

The court on motion of the defendant may grant a new trial to the defendant if required in the interest of justice. If the trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony, and direct entry of a new judgment.

A motion for a new trial based on any ground other than newly discovered evidence shall be made within 14 days after verdict or finding of guilty or within such further time as the court may fix during the 14-day period. Any motion for a new trial based on the ground of newly discovered evidence may be made only before, or within 2 years after, entry of the judgment in the Unified Criminal Docket.

If an appeal is pending, the clerk of the Unified Criminal Docket shall immediately send notice to the clerk of the Law Court of the filing of such a motion; the court shall conduct a hearing and either deny the motion or certify to the Law Court that it would grant the motion, but the court may grant the motion only on remand of the case.

Committee Advisory Note

The Rule parallels the content of Rule 32 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in the second paragraph the references to "10 days" and "10-day period" are changed to "14 days" and "14-day period" to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

Second, in the second and third paragraphs "Unified Criminal Docket" replaces "criminal docket."

Third, in the third paragraph "Law Court" replaces "appellate court" because the Superior Court no longer functions as an intermediate appellate court in the new unified process. The Law Court is now the sole appellate court. See Committee Advisory Note to M.R.U. Crim. P. 36.

RULE 34. ARREST OF JUDGMENT

The court on motion of a defendant shall arrest judgment if the court was without jurisdiction of the crime charged. The motion in arrest of judgment shall be made prior to the entry of judgment or within 14 days thereafter or within such further time as the court may fix during the 14-day period.

Committee Advisory Note

The Rule parallels the contents of Rule 34 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, an arrest of judgment is no longer available in the event the charging instrument fails to allege all the necessary elements of the crime (i.e., to charge a crime) because that defect does not deprive the trial court of jurisdiction to try the case and must now be raised before trial pursuant to Rule 12(b)(2). See Committee Advisory Note to M.R.U. Crim. P. 12(b)(2). A similar change was adopted on April 25, 2014, by the Supreme Court of the United States regarding Rule 34 of the Federal Rules of Criminal Procedure for the same reason. See Fed. R. Crim. P. 34 (effective Dec. 1, 2014).

Second, the references to "10 days" and "10-day period" are changed to "14 days" and "14-day period" respectively to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

RULE 35. CORRECTION OR REDUCTION OF SENTENCE

(a) Correction of Sentence. On motion of the defendant or the attorney for the State, or on the court's own motion, made within one year after a sentence is imposed, the justice or judge who imposed sentence may correct an illegal sentence or a sentence imposed in an illegal manner.

(b) Reduction of Sentence Before Commencement of Execution. The justice or judge who imposed sentence may reduce a sentence prior to the commencement of execution thereof.

(c) Reduction of Sentence After Commencement of Execution.

(1) *Timing of Motion*. On motion of the defendant or the attorney for the State, or on the court's own motion, made within one year after a sentence is imposed and before the execution of the sentence is completed, the justice or judge who imposed sentence may reduce that incomplete sentence.

(2) *Ground of Motion*. The ground of the motion shall be that the original sentence was influenced by a mistake of fact that existed at the time of sentencing.

(d) *Definitions*. A sentence is the entire order of disposition, including conditions of probation, supervised release and administrative release, suspension of sentence, and whether it is to be served concurrently with, or consecutively to, another sentence. A revision of sentence from imprisonment to probation is a permissible reduction of sentence. A reduction of sentence is either an obvious reduction or a change of sentence to which the defendant consents.

(e) Power of Trial Court Pending an Appeal. If an appeal is pending, the clerk of the Unified Criminal Docket shall immediately send notice to the clerk of the Law Court of the filing of the motion made under subdivisions (a) or (c); the court shall conduct a hearing and either deny the motion made under subdivisions (a) or (c) or certify to the Law Court that it would grant the motion, but the court may grant the motion only on remand of the case.

(f) Appeal by Defendant. A defendant may appeal from an adverse ruling of the court made under subdivision (a) or (c) to the Law Court as provided by the Maine Rules of Appellate Procedure.

(g) Appeal by State. The Maine Rules of Appellate Procedure govern the procedure for an appeal by the State to the Law Court from an adverse ruling of the court relative to a State-initiated motion made under subdivision (a) or (c).

Committee Advisory Note

The Rule parallels the contents of Rule 35 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) and (c)(1) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, in subdivision (d) that defines the term "sentence" for purposes of the Rule, references to conditions of "supervised release" and "administrative release" are added for purposes of completeness.

Third, in subdivision (e) the words "of the Unified Criminal Docket" are added after the word "clerk" and before the word "shall," and the words "of this Rule" are omitted after the reference to subdivision (c) and before the semicolon.

Fourth, in subdivision (e) and (f) changes in procedure reflect the fact that the Superior Court will no longer serve as an intermediate appellate court under the unified criminal procedure. See Committee Advisory Note to M.R.U. Crim. P. 36. Appeals from the District Court under subdivision (a) or (c) formerly undertaken by the Superior Court now are to the Law Court, as provided by the Maine Rules of Appellate Procedure. As a consequence, Rule 36A of the Maine Rules of Criminal Procedure is not carried forward into these new Rules.

Fifth, in subdivision (g) the procedure has similarly been changed with respect to a State-initiated motion under subdivision (a) or (c) formerly undertaken by the Superior Court. All State appeals are now to the Law Court from an adverse ruling as provided by the Maine Rules of Appellate Procedure.

VII. REVIEW BY APPEAL OR PETITION

Committee Advisory Note

The heading of Part VII in the Maine Rules of Criminal Procedure reads "**APPEALS.**" In the new Rules the heading to Part VII reads "**REVIEW BY APPEAL OR PETITION**" to better describe its contents.

RULE 36. APPEALS; PETITIONS

(a) Limited Review by Appeal or Petition in the Unified Criminal Docket. Except as set forth in this Rule or by the Maine Rules of Appellate Procedure, the Unified Criminal Docket will not entertain requests for review by appeal or petition.

(b) De Novo Review of Preconviction Bail Set by Judicial Officer for a Crime Bailable as of Right. Any defendant aggrieved by a decision of a bail commissioner may file a petition in the Unified Criminal Docket for de novo review of bail as set forth in 15 M.R.S. § 1028.

(1) *Defendant Aggrieved by a Bail Commissioner's Decision*. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of a bail commissioner may file a petition in the Unified Criminal Docket for a de novo determination of bail as set forth in 15 M.R.S. § 1028.

(2) *Defendant Aggrieved by the Court's Decision*. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition in the Unified Criminal Docket for a redetermination of bail in accordance with the procedures set forth in Rule 46(d).

(c) Review of Bail by or Appeal to a Single Justice of the Supreme Judicial Court.

(1) *Review of Preconviction Bail Under 15 M.R.S. § 1029*. Any defendant charged with a crime bailable only as a matter of discretion who is aggrieved by a decision of the court may file a petition in the Unified Criminal Docket for a review of bail by a justice of the Supreme Judicial Court in accordance with 15 M.R.S. § 1029 and the additional procedures set forth in Rule 46(e)(1).

(2) *Appeal of Post-conviction Bail Under 15 M.R.S. § 1051.* Any defendant or the State aggrieved by a decision of the court setting post-conviction bail under 15 M.R.S. § 1051 may file a notice of appeal with the clerk of the Unified Criminal Docket seeking review by a single justice of the Supreme Judicial Court in accordance with 15 M.R.S. § 1051 and the additional procedures set forth in Rule 46(e)(2).

(3) *Appeal of Revocation of Preconviction bail under 15 M.R.S. § 1097, or Revocation of Post-conviction bail under 15 M.R.S. § 1099-A.* Any defendant who is aggrieved by a decision of the court revoking preconviction bail under 15 M.R.S. § 1097 or revoking post-conviction bail under 15 M.R.S. § 1099-A, may file a notice of appeal with the clerk of the Unified Criminal Docket seeking review by a single justice of the Supreme Judicial Court in accordance with the applicable statute and the additional procedures set forth in Rule 46(e)(2).

(4) Appeal from a Denial or Conditional Order under Rule 44A. Any defendant aggrieved by a denial or conditional order entered by the court under Rule 44A may file a notice of appeal with the clerk of the Unified Criminal Docket seeking review by a single justice of the Supreme Judicial Court in accordance with the procedures set forth in Rule 44A(c).

(d) Discretionary Appeal to the Law Court. Appeal from an order of the court revoking probation pursuant to 17-A M.R.S. § 1207, revoking supervised release pursuant to 17-A M.R.S. § 1233, or revoking administrative release pursuant to 17-A M.R.S. § 1349-F shall be to the Law Court as provided by Rule 19 of the Maine Rules of Appellate Procedure.

(e) Appeal to the Law Court from a Rule 35 Adverse Ruling. Appeals from a Rule 35 adverse ruling made under subdivisions (a) or (c) shall be to the Law Court as provided by the Maine Rules of Appellate Procedure.

(f) Appeal to the Law Court in Juvenile Crime Proceedings. Appeals from the juvenile court shall be to the Law Court as provided by 15 M.R.S. § 3407.

Committee Advisory Note

The Rule is entirely new, being wholly different in content from Rule 36 of the Maine Rules of Criminal Procedure. Rules 36, 36A, 36B, 36C, and 36D of the Maine Rules of Criminal Procedure address various appeals or petitions to the Superior Court from an aggrieved defendant in the District Court, including appeals to the Superior Court in juvenile cases. None of these rules are carried

forward into the new unified criminal procedure Rules because the Superior Court will no longer be called upon to exercise its jurisdiction to hear appeals and petitions from the District Court—i.e., to serve as an intermediate appellate court. The new unified criminal procedure eliminates the distinctions between the functions of the District and Superior Courts. See Committee Advisory Note to M.R.U. Crim. P. 1(a).

New Rule 36 serves as an important sign post, identifying each of the appeals and petitions permitted to be entertained, other than as authorized by the Maine Rules of Appellate Procedure, in the Unified Criminal Docket. They include: de novo review of preconviction bail set by a judicial officer for a crime bailable as of right (subdivision (b)); review of bail by or appeal to a single justice of the Supreme Judicial Court (subdivision (c)); discretionary appeals to the Law Court (subdivision (d)); appeal to the Law Court from a Rule 35 adverse ruling (subdivision (e)); and appeal to the Law Court in juvenile crime proceedings (subdivision (f)).

RULES 37. [RESERVED]

RULE 38. STAY OF EXECUTION OF SENTENCE

(a) Sentence Involving Imprisonment, Probation, Supervised Release, or Administrative Release. Any portion of a sentence involving imprisonment, probation, supervised release, or administrative release shall be stayed if an appeal is taken and the defendant is admitted to bail pending appeal. A court may not under any circumstances place the defendant in execution of a probationary period, period of supervised release, or period of administrative release while on bail pending appeal.

(b) Sentence Involving Alternatives Other than Imprisonment, Probation, Supervised Release, or Administrative Release. Any portion of a sentence involving a sentence alternative other than imprisonment, probation, supervised release, or administrative release shall be stayed by the court upon request of the defendant if an appeal is taken and if the defendant is admitted to bail pending appeal. If the defendant takes an appeal and does not or cannot seek bail pending appeal or is unable to meet the bail that is set, the court upon request of the defendant may stay any portion of a sentence involving money and may stay any other sentence alternative on any terms considered appropriate. If the judgment is vacated and the stayed sentence alternative involves money, the clerk of the Unified Criminal Docket shall forthwith refund to the defendant, or to such

person as the defendant shall direct, any funds deposited to cover the defendant's money alternative. If the judgment is affirmed, the funds so deposited shall be applied by the clerk in payment of the money alternative. The clerk shall forthwith notify the defendant that such application has been made and, when applicable, the money alternative paid in full.

(c) Automatic Termination of Stay. If a judgment is affirmed on appeal, a court ordered stay under subdivision (a) or (b) automatically terminates when the mandate of the Law Court is entered in the Unified Criminal Docket of the trial court.

(d) Surrender of Defendant Following Automatic Termination of Stay. When a stay of a sentence of imprisonment automatically terminates pursuant to subdivision (c), the clerk of the Unified Criminal Docket shall forthwith mail a date-stamped copy of the mandate to the parties and to the sheriff named in the commitment order. Within 3 days after that mailing, excluding Saturdays, Sundays, and legal holidays, the defendant's appellate counsel or, if not represented by counsel on appeal, the defendant shall contact the office of the sheriff named in the commitment order and make arrangements satisfactory to the sheriff for surrendering into that sheriff's custody that day or, at the direction of the sheriff, the next regular business day. If such arrangements are not timely made, or if the arrangements are not complied with, upon the request of the named sheriff or the attorney for the State, or by direction of the court, the clerk shall issue a warrant for the defendant's arrest. Upon issuance of that warrant and necessary notice by the clerk to the court of that fact, the court, in conformity with Rule 46(g)(1), shall declare a forfeiture of the post-conviction bail because of the breach of condition.

Committee Advisory Note

The Rule parallels the content of Rule 38 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) "supervised release," pursuant to 17-A M.R.S. §§ 1231-1233, is added to prohibit a court from placing the defendant in execution of the period of release while on bail pending appeal for purposes of clarity.

Second, in subdivision (b) "supervised release" is added both to its heading and its content in response to the change in subdivision (a).

Third, in subdivision (b) the words "of the Unified Criminal Docket" are added after the word "clerk" and before the word "shall" to enhance clarity.

Fourth, in subdivision (c) the words "Unified Criminal Docket" replace the words "criminal docket."

Fifth, in subdivision (c) the words "Law Court" replace the words "appellate court" because the Superior Court is no longer serving as an intermediate appellate court under the unified criminal procedure. The Law Court is now the sole appellate court. See Committee Advisory Note to M.R.U. Crim. P. 36.

RULE 39. [RESERVED]

VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

RULE 40. [RESERVED]

RULE 41. SEARCH AND SEIZURE

(a) Scope. This Rule does not modify any special statutory provision regulating search, seizure, or the issuance and execution of search warrants.

(b) Authority to Issue a Search Warrant. A search warrant may be issued by the court or a justice of the peace as authorized by law.

(c) Grounds to Issue a Search Warrant. A warrant may be issued under this Rule to search for and seize any (1) property that constitutes evidence of the commission of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a crime; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(d) Definition of Property. The term "property" is used in this Rule and in Rules 41A and 41B to include, but not be limited to, the following:

(1) Documents, books, papers, and any other tangible objects;

(2) Electronically stored information;

(3) Information derived from a tracking device;

(4) Biological materials, including hair, blood, saliva, fingernail clippings or scrapings and materials obtainable by swab;

(5) Fingerprints, palmprints, and footprints; and

(6) Photographs, videos, or any other digital image of any person or object.

(e) Requesting a Search Warrant.

(1) *In General.* A search warrant request must be made in the presence of the court or justice of the peace unless the court or justice of the peace, upon request of the applicant, determines it reasonable under the circumstances to allow a search warrant request to be made outside the presence of the court or justice of the peace.

(2) *Requesting a Search Warrant in the Presence of the Court or Justice of the Peace.* A search warrant request made in the presence of the court or justice of the peace must be in the form of a written affidavit sworn to before the court or justice of the peace. The affidavit must specifically designate the person or place or other property to be searched or the tracking device to be installed and used, and the person or property to be searched for or tracked. Before ruling on the request the court or justice of the peace may hear evidence under oath or affirmation which shall be taken down by a court reporter or recording equipment or recorded in a manner that is capable of producing a record adequate for purposes of review.

(3) *Requesting a Search Warrant Outside the Presence of the Court or Justice of the Peace.* A search warrant request to be made outside the presence of the court or justice of the peace, if permitted by the court or justice of the peace, shall be as provided by Rule 41C.

(f) Issuing a Search Warrant.

(1) *Duty of the Court or Justice of the Peace.* If the court or justice of the peace to whom the search warrant request is made concludes that there is probable cause to believe that the grounds for the search exist, the court or justice of the peace shall issue a search warrant designating, except as otherwise provided in Rule 41B, the person, place, or other property to be searched, and the person or place or other property to be searched for.

(2) *Contents of the Search Warrant.*

(A) *In General.* The search warrant shall be directed to any officer authorized to enforce or assist in enforcing any law of the State of Maine. It shall state the names of the persons whose affidavits have been taken in support thereof. Except as otherwise provided in Rule 41B it shall command the officer to search the person or place named for the person or property specified. It shall designate the Unified Criminal Docket to which it shall be returned. A copy of the search warrant shall promptly be filed with the Unified Criminal Docket designated in the warrant by the applicant.

The warrant and affidavit materials shall be treated as impounded until the return is filed.

(B) *Nighttime Search Warrant.* The warrant shall direct that it be executed between the hours of 7 a.m. and 9 p.m., unless the court or justice of the peace, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at another time.

(C) *Unannounced Execution of Search Warrant.* The warrant may direct that it be executed by an officer without providing notice of the officer's purpose and office if the court or justice of the peace so directs by appropriate provision in the warrant. The court or justice of the peace may so direct in the warrant upon a finding of reasonable cause showing that

> (1) The property sought may be quickly or easily altered, destroyed, concealed, removed, or disposed of if prior notice is given;
>
> (2) The escape of the person sought may be facilitated if prior notice is given;
>
> (3) The person sought, the person from whom or from whose premises the property is sought, or an occupant thereof, may use deadly or nondeadly force in resistance to the execution of the warrant, and dispensing with prior notice is more likely to ensure the safety of officers, occupants, or others;
>
> (4) Such facts and circumstances exist as would render reasonable the warrant's execution without notice.

(g) Execution and Return with Inventory. The warrant may be executed and returned only within 14 days after its date. Upon the expiration of the 14 days, the warrant must be returned to the Unified Criminal Docket designated in the warrant. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken. If the person is not present, the officer shall leave the copy of the warrant and the receipt at the premises. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant. It shall be verified by the officer. Upon request the justice or judge sitting in the Unified Criminal Docket designated in the warrant shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(h) Return of Papers to Clerk. The justice or judge sitting in the Unified Criminal Docket to which a search warrant is returned shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk of the Unified Criminal Docket for the district and division in which the property was seized.

The court, upon motion or upon the court's own motion, may for good cause order the clerk to impound some or all of the warrant materials until a specified date or event.

(i) Attorney for State to File Notice. If a complaint, indictment, or information is filed subsequent to a search, the attorney for the State must file a notice with the clerk of the Unified Criminal Docket of the district in which the search took place stating the venue of the case. The clerk will transfer the search warrant to the court having jurisdiction and venue over the criminal action instituted by the complaint, indictment, or information.

(j) Motion for Return of Property. A person aggrieved by an unlawful seizure of property may file a motion in the Unified Criminal Docket for the return of the property on the ground that it was illegally seized. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the court shall order that the property be restored unless otherwise subject to lawful detention. The motion may be joined with a motion to suppress evidence.

Committee Advisory Note

The Rule parallels the content of Rule 41 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (b), (e)(1), (2) and (3), (f)(1), (2)(C), (h), second paragraph, and (j), including in the headings to subdivision (e)(2), (3), and (f)(1), the word "court" replaces the words "Superior Court justice, District Court Judge" or "justice, judge." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d).

Second, in subdivision (f)(2)(A) the words "by the applicant" have been added after the word "warrant" to clarity that the duty to file the warrant with the Unified Criminal Docket is imposed upon the applicant.

Third, in subdivision (f)(2)(A), (g), (h), (i), and (j), "Unified Criminal Docket" replaces "District Court" or a variant thereof.

Fourth, in subdivision (g) "10 days" is changed to "14 days" in order to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

Fifth, in subdivision (i) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Sixth, in subdivision (j) the special filing procedure for the motion when no charge has yet been filed is not carried forward since the Superior Court no longer functions differently from the District Court in handling motions for return of property. The motion, whether a charge is pending or is not yet pending, must be filed in the appropriate Unified Criminal Docket.

RULE 41A. MOTION TO SUPPRESS EVIDENCE

(a) Grounds of Motion. A defendant may move to suppress as evidence any of the following, on the ground that it was illegally obtained:

(1) property;

(2) statements of the defendant;

(3) test results;

(4) out-of-court or in-court eyewitness identifications of the defendant.

(b) Time of Making Motion. The motion shall be filed within the time specified in Rule 12(b)(3). For good cause shown, the court may entertain the motion at a time beyond that provided in Rule 12(b)(3).

(c) Hearing. The court shall receive evidence on any issue of fact necessary to the decision of the motion.

(d) Order. If the motion is granted, the court shall enter an order limiting the admissibility of the evidence according to law. If the motion is granted or denied, the court shall make findings of fact and conclusions of law either on the record or in writing.

If the court fails to make such findings and conclusions, a party may file a motion seeking compliance with the requirement. If the motion is granted and if the findings and conclusions are in writing, the clerk shall mail a date-stamped copy thereof to each counsel of record and note the mailing on the Unified Criminal Docket. If the findings and conclusions are oral, the clerk shall mail a copy of the docket sheet containing the relevant docket entry and note the mailing on the Unified Criminal Docket.

Committee Advisory Note

The Rule parallels the content of Rule 41A of the Maine Rules of Criminal Procedure except that in subdivision (d) "Unified Criminal Docket" replaces references to the "criminal docket."

RULE 41B. SPECIAL PROVISIONS FOR SEARCHES AND SEIZURES OF CERTAIN KINDS OF PROPERTY

(a) Electronically Stored Information.

(1) *Contents of Warrant.* A warrant seeking electronically stored information may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The warrant may authorize the retention by the property owner of an

electronic copy of such information necessary to avoid or mitigate business interruption or other disruptive consequences.

(2) *Execution of Warrant.* The time for executing the warrant in Rule 41(g) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(3) *Inventory*. The inventory may be limited to describing the physical storage media that were seized or copied.

(b) Information Derived From a Tracking Device.

(1) *Definition of Tracking Device*. The term "tracking device" is used in this Rule and in Rule 41 to mean an electronic or mechanical device which permits the tracking of the movement of a person or object.

(2) *Contents of Warrant*. A warrant for a tracking device must identify the person or property to be tracked and the Unified Criminal Docket to which it must be returned. It must command the officer to complete any installation authorized by the warrant within a specified time and specify a reasonable length of time that the device may be used.

(3) *Execution and Return of Warrant*. Notwithstanding Rule 41(g), within 14 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the Unified Criminal Docket designated in the warrant. The time for executing the warrant in this paragraph refers to the use of the tracking device and not to any later data extraction and review. The officer must enter on the warrant the date and time the device was installed and the period during which it was used.

(4) *Service of Warrant*. Within 14 calendar days after the use of the tracking device has ended, the officer executing it must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by (A) delivering a copy to the person who, or whose property, was tracked; (B) leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or (C) mailing a copy to the person's last known address. The time may be extended by the court for good cause shown.

(c) Cell Phone or Other Electronic Device Location Information.

The following outlines the special statutory provisions both for obtaining the location information of a cell phone or other electronic device and for its in-court use at a trial, hearing, or proceeding as provided under 16 M.R.S. §§ 647 to 650-B. Additionally, it specifies how Rule 41 is to be applied; identifies the "appropriate court" in which the written statement must be filed to comply with 16 M.R.S. § 650(4); and makes all written statements confidential unless a court orders otherwise with respect to a specific written statement.

(1) *Definitions.* The definitions for "electronic communication service," "electronic device," "location information," and other included statutorily defined terms are as provided under 16 M.R.S. § 647.

(2) *Search Warrant Requirement; Application Process; Time Allowed for Execution.* Unless an exception is provided by 16 M.R.S. § 650, a search warrant is required to obtain location information by 16 M.R.S. § 648. The application process for the issuance of the search warrant and its return are as provided in Rule 41. The time allowed for its execution, however, is provided by 16 M.R.S. § 648, not Rule 41(g).

(3) *Notice Obligation to Identifiable Owner or User; Timing and Content of Written Notice.* Unless waived as provided under 16 M.R.S. § 649(2), written notice to an identifiable owner or user is as provided under 16 M.R.S. § 649. Timing and content of the written notice is as provided under 16 M.R.S. § 649(1).

(4) *Court Order Prohibiting an Electronic Communication Service or Location Information Service from Disclosing Existence of Search Warrant.* A court order to a provider of electronic communication service or location information service not to notify any other person of the existence of the search warrant is as provided under 16 M.R.S. § 649(3).

(5) *Exceptions to Warrant Requirement.* Exceptions to the requirement of obtaining a search warrant in order to obtain location information is as provided under 16 M.R.S. § 650. In the event no warrant is obtained due to reliance upon the immediate danger of death or serious physical injury exception pursuant to 16 M.R.S. § 650(4), the required written statement must be filed with the Kennebec County Consolidated Clerk's Office. Unless a court orders otherwise with respect to a specific written statement, all written statements are confidential.

(6) *Conditions for In-Court Use of Location Information or Evidence Derived From It.* Unless waived by a court under 16 M.R.S. § 650-A(2), use at a trial, hearing, or proceeding of location information or evidence derived from it is conditioned upon notice and the furnishing of certain warrant materials as provided by 16 M.R.S. § 650-A(1).

(d) Cell Phone or Other Portable Electronic Device Content Information.

The following outlines the special statutory provisions both for obtaining the content information of a cell phone or other portable electronic device and the consequences for violating its provisions as provided under 16 M.R.S. §§ 641-646.

(1) *Definitions.* The definitions for "content information," "electronic communication service," "portable electronic device," and other included statutorily defined terms are as provided under 16 M.R.S. § 641.

(2) *Search Warrant Requirement.* Unless an exception is provided under 16 M.R.S. § 644, a search warrant is required to obtain content information from a provider of electronic communication service by 16 M.R.S. § 642. The application process for the issuance of the search warrant, its execution and return are as provided in Rule 41.

(3) *Notice Obligation to Owner or User; Timing and Content of Written Notice.* Unless waived under 16 M.R.S. § 643(2), written notice to an owner or user is as provided by 16 M.R.S. § 643. Timing and content of the written notice is as provided by 16 M.R.S. § 643(1).

(4) *Court Order Prohibiting Electronic Communication Service from Disclosing Existence of Search Warrant.* A court order to a provider of electronic communication services not to notify any other person of the existence of the search warrant is as provided under 16 M.R.S. § 643(3).

(5) *Exceptions to Warrant Requirement.* Exceptions to the requirement of obtaining a search warrant in order to obtain content information are as provided under 16 M.R.S. § 644.

(6) *Content Information Obtained in Violation of 16 M.R.S. §§ 641-644 Inadmissible.* Content information obtained in violation of 16 M.R.S. §§ 641-644 is inadmissible in a criminal proceeding as provided under 16 M.R.S. § 645.

Committee Advisory Note

The Rule parallels the content of Rule 41B of the Maine Rules of Criminal Procedure except that in subdivision (b)(3) and (4) the references to "10 calendar days" are changed to "14 calendar days" to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

RULE 41C. SEARCH WARRANT REQUEST MADE BY APPLICANT OUTSIDE THE PRESENCE OF THE COURT OR JUSTICE OF THE PEACE

(a) In General. The court or justice of the peace may, upon request of the applicant, allow a search warrant request to be made outside the presence of the court or justice of the peace if the court or justice of the peace determines it to be a reasonable request under the circumstances.

(b) Procedures to be Applied. If the court or justice of the peace allows the applicant to make the search warrant request outside the presence of the court or justice of the peace the following procedures apply:

(1) The request must be in the form of a written affidavit transmitted by reliable electronic means to the court or justice of the peace. The contents of the affidavit must conform to Rule 41(e)(2). The applicant, by telephone or other reliable electronic means, must attest to its contents, and the court or justice of the peace must acknowledge the attestation in writing on the affidavit. Before ruling on the request the court or justice of the peace may hear evidence under oath or affirmation by telephone or other reliable means that shall be taken down by a court reporter or recording equipment, or otherwise recorded in a manner that is capable of producing a record adequate for purposes of review.

(2) In addition to the written affidavit the applicant shall prepare a proposed search warrant and transmit it by reliable electronic means to the court or the justice of the peace. The contents of the warrant must conform to Rule 41(f)(2) or, when applicable, Rule 41B(a)(1) or 41B(b)(2). The transmission received by the court or justice of the peace may serve as the original.

(3) If the court or justice of the peace is satisfied that there is probable cause to believe that the grounds for the search exist, the court or justice of the peace

shall sign the proposed search warrant or a modified version, enter the date and time of issuance on the warrant, and transmit it by reliable electronic means to the applicant. A copy of the issued search warrant shall promptly be filed with the Unified Criminal Docket designated in the warrant by the applicant.

(c) Suppression Limited. Absent a finding of bad faith, evidence obtained from a warrant issued under this Rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

Committee Advisory Note

The Rule parallels the content of Rule 41C of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in the heading to the Rule and in subdivision (a) and (b), the word "court" replaces the words "Superior Court Justice, District Court Judge" and its variant "justice, judge." See Committee Advisory Note to M.R.U. Crim. P. 3(b) and (d).

Second, in subdivision (b)(3) the words "Unified Criminal Docket" replace the words "District Court."

Third, in subdivision (b)(3) the phrase "by the applicant" is added to make clear that it is the applicant's duty to file a copy of the issued search warrant with the Unified Criminal Docket designated in the warrant.

RULE 42. CONTEMPT PROCEEDINGS

Procedures to implement the inherent and statutory powers of the court to impose sanctions for contempt arising out of any criminal proceeding are set out in Rule 66 of the Maine Rules of Civil Procedure.

Committee Advisory Note

The Rule mirrors the content of Rule 42 of the Maine Rules of Criminal Procedure.

IX. GENERAL PROVISIONS

RULE 43. PRESENCE OF THE DEFENDANT

The defendant shall be present at the arraignment, at the dispositional conference, at every stage of the trial including the impaneling of the jury, and at the return of the verdict, and at the imposition of sentence, except as otherwise provided by these Rules. In any criminal prosecution the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict and imposition of sentence. A corporation may appear by counsel for all purposes. In any criminal prosecution for a Class D or Class E crime, the court may permit arraignment, plea, trial, and imposition of sentence of a represented defendant in the defendant's absence.

Committee Advisory Note

The Rule parallels the content of Rule 43 of the Maine Rules of Criminal Procedure except that "at the dispositional conference" is added to the first sentence mandating the defendant's presence at the conference.

RULE 44. RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Assignment of Counsel.

(1) *Before Verdict*. If the defendant in a proceeding in which the crime charged is murder or a Class A, Class B, or Class C crime appears in any court without counsel, the court shall advise the defendant of the defendant's right to counsel and assign counsel to represent the defendant at every stage of the proceeding unless the defendant elects to proceed without counsel. If the defendant is without sufficient means to employ counsel, the court shall make an initial assignment of counsel. Assigned counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is assigned. The Maine Commission on Indigent Legal Service will, pursuant to procedures established by the Commission, accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court. Counsel initially assigned by the court shall remain counsel of record unless the Commission does not accept the assignment and provides notice of substitution of counsel and counsel files a notice of withdrawal

pursuant to Rule 44B, or counsel is otherwise granted leave to withdraw pursuant to Rule 44B.

If a defendant in a proceeding in which the crime charged is a Class D or Class E crime appears without counsel, the court shall advise the defendant of the defendant's right to be represented by counsel at every stage of the proceeding unless the defendant elects to proceed without counsel. If the defendant is without sufficient means to employ counsel, the court shall make an initial assignment of counsel, unless the court concludes that in the event of conviction a sentence of imprisonment will not be imposed. Assigned counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is assigned. The Maine Commission on Indigent Legal Service will, pursuant to procedures established by the Commission, accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court. Counsel initially assigned by the court shall remain counsel of record unless the Commission does not accept the assignment and provides notice of substitution of counsel and counsel files a notice of withdrawal pursuant to Rule 44B, or counsel is otherwise granted leave to withdraw pursuant to Rule 44B.

(2) *On Appeal*. Counsel assigned to a case in the Unified Criminal Docket shall continue to represent the defendant unless relieved by order of the trial court or the Law Court. The court may assign counsel to a defendant determined indigent after verdict or finding pursuant to Rule 44A.

(b) Determination of Indigency. The court shall determine whether a defendant has sufficient means with which to employ counsel and in making such determination may examine the defendant under oath concerning the defendant's financial resources. A defendant does not have sufficient means with which to employ counsel if the defendant's lack of resources effectively prevents the defendant from retaining the services of competent counsel. In making its determination the court shall consider the following factors: the defendant's income, the defendant's credit standing, the availability and convertibility of any assets owned by the defendant, the living expenses of the defendant and the defendant's dependents, the defendant's outstanding obligations, the financial resources of the defendant's parents if the defendant is an unemancipated minor residing with his or her parents, and the cost of retaining the services of competent counsel.

If the court finds that the defendant has sufficient means with which to bear a portion of the expense of the defendant's defense, it shall assign counsel to represent the defendant in accordance with subdivision (a)(1), above, but may condition its order on the defendant's paying to the court a specified portion of the counsel fees and costs of defense. When such a conditional order is issued, the court shall enter an order stating its findings.

(c) Compensation of Counsel. Counsel appointed to represent a defendant shall receive compensation for services performed and expenses incurred as assigned counsel pursuant to rates and standards established by the Maine Commission on Indigent Legal Services pursuant to 4 M.R.S. § 1804(2) and (3). Assigned counsel shall under no circumstances accept from the defendant or from anyone else on the defendant's behalf any compensation for services or costs of defense, except pursuant to court order.

(d) [Reserved].

(e) Bar Registration Number. All attorneys appearing in the Unified Criminal Docket shall include their Maine Bar Registration Numbers on all documents filed with the court.

Committee Advisory Note

The Rule parallels the content of Rule 44 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subsection (a)(2) the words "Counsel assigned to a case in the Unified Criminal Docket" replace the words "Assigned counsel who represents a defendant in the District Court, the Superior Court, or a court with a unified criminal docket."

Second, in subsection (a)(2) "Law Court" replaces "appellate court" because the Superior Court no longer functions as an intermediate appellate court in the new unified process. The Law Court is now the sole appellate court. See Committee Advisory Note to M.R.U. Crim. P. 36.

Third, subdivision (d) is not carried forward into the new Rule because the transitional period is over.

Fourth, in subdivision (e) "Unified Criminal Docket" replaces the reference to "court."

RULE 44A. PROCEDURE FOR DETERMINATION OF INDIGENCY AFTER VERDICT OR FINDING

(a) Petition and Hearing. A defendant who has filed notice of appeal and who claims to be without financial means to prosecute the appeal may, within 14 days following the filing of the notice of appeal, file a petition in the court in which the defendant was convicted requesting that the defendant be declared indigent. The petition shall be heard promptly. The clerk of the Unified Criminal Docket shall forthwith notify the clerk of the Law Court of the filing of a petition pursuant to this Rule.

(b) Order. If, after hearing, the court finds that the petitioner is without financial means with which to prosecute the appeal, it shall grant the relief requested. If, after hearing, the court finds that the petitioner has financial means with which to bear a portion of the expense of prosecuting the appeal, it shall grant the relief requested but may condition its order on the petitioner's paying a portion of the expense of prosecuting the appeal. If, after hearing, the court finds that the petitioner has financial means with which to prosecute the appeal, the petition shall be denied.

When a conditional order is issued or when a petition is denied, the court shall file a decree setting forth its findings.

(c) Review. From the findings filed following the denial of a petition or the granting of a conditional order, the petitioner may, within 14 days after the filing thereof, appeal to a justice of the Supreme Judicial Court if the petition is denied in the Unified Criminal Docket. The justice, after notice to the attorney for the State, shall hear the matter de novo, and may affirm, modify, or reverse the findings of the court below. If the findings are modified or reversed, the matter shall be remanded to the court below for appropriate action. The decision of the reviewing justice shall be final. During the pendency of this appeal the time periods for the perfection of the appeal on the merits shall not run, but shall commence to run upon final disposition of the petition. The clerk below shall forthwith notify the clerk of the Law Court of such final disposition and the date of its entry.

Committee Advisory Note

The Rule parallels the content of Rule 44A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a) and (c) the references to "10 days" are changed to "14 days" to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

Second, in subdivision (a), the words "of the Unified Criminal Docket" are added following the word "clerk" at the beginning of the last sentence to enhance clarity.

Third, in subdivisions (a) and (c) "Law Court" replaces the words "of the court to which the defendant has appealed" because the Superior Court will no longer be exercising its review jurisdiction in the new unified process. The Law Court assumes that role. See Committee Advisory Note to M.R.U. Crim. P. 36.

Fourth, in subdivision (c) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

RULE 44B. WITHDRAWAL OF COUNSEL

Counsel may withdraw from a case by serving notice of withdrawal on his or her client and the State and filing the notice, provided that such notice is accompanied by notice of the appearance of other counsel. Unless this condition is met, counsel may withdraw from the case only by leave of court. A court order relieving appointed counsel does not become effective until either new counsel is appointed or the defendant formally waives the right to appointed counsel.

Committee Advisory Note

The Rule parallels the content of Rule 44B of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the letter "s" in the word "state" is capitalized because the word is referring to the "State" as a party.

Second, a second condition for withdrawal by counsel—namely, "In a case when counsel is assigned to represent an indigent defendant, the other counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of a case involved"—is omitted as unnecessary. This omission necessitates that the words "this condition is" replace the words "these conditions are" in the next sentence.

Third, the final sentence replaces the word "assigned" with the word "appointed" and omits the words "in accordance with Rule 44, subdivision (a)(1)" as unnecessary.

RULE 44C. APPLICATION TO MAINE COMMISSION ON INDIGENT LEGAL SERVICES FOR FUNDS FOR EXPERT OR INVESTIGATIVE ASSISTANCE FOR INDIGENT DEFENDANT

A defendant found indigent or who claims to be without sufficient means to employ expert or investigative assistance necessary for his or her defense may file an application for funds to obtain expert or investigative assistance or both with the Maine Commission on Indigent Legal Services in accordance with procedures established by the Commission.

Committee Advisory Note

The Rule parallels the content of Rule 44C of the Maine Rules of Criminal Procedure but differs with the following respects.

First, the heading is changed from "**PROCEDURE FOR OBTAINING FUNDS FOR EXPERT OR INVESTIGATIVE ASSISTANCE FOR INDIGENT DEFENDANT**" to "**APPLICATION TO MAINE COMMISSION ON INDIGENT LEGAL SERVICES FOR FUNDS FOR EXPERT OR INVESTIGATIVE ASSISTANCE FOR INDIGENT DEFENDANT**" for purposes of clarity.

Second, the use of a subdivision (a) and its heading "**Application to the Maine Commission on Indigent Legal Services**" is omitted, because there are no additional subdivisions.

Third, the final sentence is not carried forward into the new Rule because the procedures established by the Commission for application for and approval of requests have now been published.

RULE 45. TIME

(a) Computation. In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

For the purpose of this subdivision legal holidays shall include days on which the clerk's office is closed pursuant to Rule 54.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; however the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to act in a criminal proceeding. This Rule shall not affect the times at which a grand jury may be summoned nor shall it affect the limitations upon the power of bail commissioners.

(d) For Motions; Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 7 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be

served with the motion, and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do any act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served upon the party by mail, 3 days shall be added to the prescribed period.

Committee Advisory Note

The Rule parallels the content of Rule 45 of the Maine Rules of Criminal Procedure except that in subdivision (b) references to both Rules 36 and 36B are omitted because new Rule 36 is no longer appropriately included and former Rule 36B is not carried forward into the new Rules.

RULE 46. CERTAIN PROCEDURAL PROVISIONS GOVERNING BAIL

(a) In General. This Rule contains certain procedural provisions governing bail for a defendant or for a witness. The procedure governing preconviction and post-conviction bail for a defendant is generally provided by statute.

(b) Bail by a Bail Commissioner.

(1) *Required Factual Endorsements Upon Written Release Order*. Every bail commissioner upon accepting bail shall endorse upon the written release order the following facts: the date and place (town or city) of accepting bail, the court before which the prisoner is required to appear, the crime or crimes of which the prisoner is accused, the amount and conditions of bail, the names and addresses of each surety or owner of cash bail, the prisoner's mailing address and, if different, residence address, and, if known, the date and time the prisoner is to appear, the Arrest Tracking Number, the Charge Tracking Number, and the date of birth of the prisoner.

(2) *Inability of Person in Custody to Pay Bail Commissioner Fee*. A person presently in custody who is qualified to be released upon personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail that has been set by a judicial officer, but who in fact lacks the present financial ability to pay a bail commissioner fee, shall nonetheless be released upon personal recognizance or upon execution of an unsecured appearance bond. A bail commissioner shall not

refuse to (A) examine a person to determine the person's eligibility for bail, (B) set bail, (C) prepare the personal recognizance or bond, or (D) take the acknowledgement of the person in custody, because a person in custody lacks the present financial ability to pay a bail commissioner fee.

(c) Bail Given on Appeal; Place of Deposit. Whenever cash or other property is given on appeal, it shall be deposited with the clerk of the Unified Criminal Docket on the next regular business day.

(d) Redetermination of Bail by Another Justice or Judge. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file one petition for redetermination of bail by another justice or judge. Such petition must be filed with the court no later than 14 days before the date set for the defendant's dispositional conference. If the defendant is incarcerated, hearing on the petition shall be scheduled before any justice or judge within 48 hours of filing, excluding Saturdays, Sundays, legal holidays, and court holidays. For a defendant who is in custody, the court shall provide notice of the hearing to the attorney for the State at least 24 hours before the hearing. If the defendant is not in custody, hearing on the petition shall be scheduled within 7 days after it has been filed. For a defendant who is not in custody, the court shall provide notice of the hearing to the attorney for the State at least 72 hours before the hearing. The court shall review the petition and, after providing the parties with an opportunity to be heard, may set bail in any manner authorized by 15 M.R.S. § 1026.

(e) Review of Bail by or Appeal to a Single Justice of the Supreme Judicial Court.

(1) *Petition*. A petition for review of preconviction bail under 15 M.R.S. § 1029 shall be filed in the Unified Criminal Docket. The clerk shall promptly deliver a copy of the petition to any Justice of the Supreme Judicial Court designated by a general order or special assignment of the Chief Justice to sit in single justice matters in that county. On receipt of the petition, the trial court's order, and the available record of the hearing below, the assigned justice will either conduct a hearing de novo or conduct a review, depending upon what is required under the law. Briefing and oral argument may be dispensed with by the assigned Justice.

(2) *Appeal*. An appeal of post-conviction bail under 15 M.R.S. § 1051, or an appeal of revocation of preconviction bail under 15 M.R.S. § 1097 or revocation of post-conviction bail under 15 M.R.S. § 1099-A shall be taken by filing a notice of appeal with the clerk of the Unified Criminal Docket. The clerk shall promptly deliver a copy of the notice to any designated justice of the Supreme Judicial Court. On receipt of the notice of appeal, the trial court's order, and the available record of the hearing below, the assigned justice shall review the record and, with or without briefing or argument, determine whether the trial court's order is without a rational basis.

(f) Statement to Person Offering Surety for a Defendant. Every judicial officer or clerk who accepts property, including money, as security for bail shall first provide to the prospective surety the oral and written advice required under 15 M.R.S. § 1072-A(2) and (3) respectively, as well as a copy of the written release order pertaining to the defendant required under 15 M.R.S. § 1072-A(1).

(g) Forfeiture.

(1) *Declaration*. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail and give prompt notice to the obligors.

(2) *Setting Aside*. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement*. When no motion to set aside a forfeiture has been made within 35 days of notice of the declaration of forfeiture, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and their liability may be enforced on motion without the necessity of an independent action.

(4) *Remission*. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(h) Exoneration. When the condition of the bond has been satisfied, the court shall exonerate the obligors and release any bail.

(i) Bail for Witness. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure that person's presence by subpoena, the court may order

the arrest of that person and may require that person to give bail for his or her appearance as a witness. If the person fails to give bail the court may commit that person to the custody of the sheriff pending final disposition of the proceeding in which the testimony is needed, may order that person's release if he or she has been detained for an unreasonable length of time, and may modify at any time the requirement as to bail.

If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been taken the court may discharge the witness.

Committee Advisory Note

The Rule parallels the content of Rule 46 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (c) the words "Unified Criminal Docket" replace the words "trial court."

Second, subdivision (d) is entirely new. It establishes the needed procedure for a redetermination of bail by another justice or judge for any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail. The redetermination of bail by another justice or judge by way of petition is as authorized pursuant to M.R.U. Crim. P. 36(b)(2). The petition must be filed in the Unified Criminal Docket no later than 14 days before the date set for the defendant's dispositional conference. Hearing before any justice or judge must be scheduled within 48 hours of filing, excluding Saturdays, Sundays, legal holidays, and court holidays, if the defendant is incarcerated. The court must provide notice of the hearing to the attorney for the State at least 24 hours before the hearing. If the defendant is not incarcerated, the hearing before any justice or judge must be scheduled within 7 days after it is filed. The court must provide notice of the hearing to the attorney for the State at least 72 hours before the hearing. The hearing justice or judge, after receiving the petition and providing the parties an opportunity to be heard, may set bail in any manner authorized by 15 M.R.S. § 1026.

Third, because the content of subdivision (d) is entirely new, subdivisions (d), (e), (f), (g), and (h) of M.R. Crim. P. 46 are redesignated (e), (f), (g), (h), and (i) in the new Rule.

Fourth, in subdivision (d) the letter "s" in the word "state" is capitalized because it is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Fifth, in subdivision (e)(1) and (2) the words "Unified Criminal Docket" replace the words "Superior Court."

Sixth, in subdivision (g)(3) the words "30 days of notice of the declaration of forfeiture" is changed to "35 days of notice of the declaration of forfeiture" to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

RULE 47. MOTIONS AND MOTION DAY

(a) Motions. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made, the rule or statute invoked if the motion is brought pursuant to a rule or statute, and the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b) Motion Day. The clerk of the Unified Criminal Docket shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the court at any time or place and on such notice, if any, as it considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business or for the convenience of the parties, the court may make provision for the submission and determination of motions without oral hearing upon brief written statements of the reasons in support and opposition.

(c) Motion for Enlargement of Time or for Continuance. Any party filing a motion for enlargement of time to act under these Rules or for a continuance, except a continuance addressed in Rule 25A, shall file with the

motion a statement indicating whether the motion is opposed or unopposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be stated. The fact that a motion is unopposed does not assure that the requested relief will be granted.

(d) Nontestimonial Hearings Using Audio or Video Equipment. The use of telephone, audio, or video conference equipment is encouraged for nontestimonial hearings and scheduling matters. A party may request this use or the court may act upon its own initiative. The court shall direct the terms of use, and, except when only scheduling matters are to be discussed, the court shall attempt to assure that the hearing is recorded by the best practicable means.

Committee Advisory Note

The Rule parallels the content of Rule 47 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (b) the clerk of the Unified Criminal Docket assumes the former functions of the Chief Justice of the Superior Court and the Chief Judge of the District Court in establishing "regular times and places . . . at which motions requiring notice and hearing may be heard and disposed of."

Second, in subdivision (c) the reference to Rule "25-A" is corrected to read "25A." See also Advisory Note—October 2013 to M.R. Crim. P. 25A.

RULE 48. DISMISSAL

(a) By the Attorney for the State. The attorney for the State may file a written dismissal of an indictment, information, or complaint or any count of an indictment, information, or complaint, setting forth the reasons for the dismissal, and the prosecution relating to that dismissal shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(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 of the Unified Criminal Docket 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.

Committee Advisory Note

The Rule parallels the content of Rule 48 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a) and (b)(2) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, the words "of the Unified Criminal Docket" are added after the word "clerk" to enhance clarity.

RULE 49. SERVICE AND FILING OF PAPERS

(a) Service: When Required. Written motions other than those that are heard ex parte, written notices, designations of the record on appeal, and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these Rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon entry of an order made on a written motion subsequent to arraignment the clerk of the Unified Criminal Docket shall mail or deliver to each party a notice thereof and shall make a note in the docket of the mailing or delivery.

(d) Filing. Except as provided in Rule 12(b)(3)(A), papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions. All court notices in a case will be sent to the attorney for the

State who has been designated by the District Attorney or Attorney General to receive notices from a court. Changes in designations of attorneys to receive notice must be filed with the Office of Information Technology. If an attorney for the State other than the designee has entered his or her appearance and wishes to receive notice, that attorney must make arrangements with the court by filing an appropriate request in the case for notice. The request must include the attorney's Maine Bar Registration Number.

(e) Form of Papers. All papers filed with the court may be typewritten, printed or otherwise duplicated upon opaque, unglazed paper 8-1/2 X 11 inches in size. The typed or printed matter must be double spaced except for quotations, head notes and footnotes and must be legible. All typed or printed matter must appear in at least 12-point type, except that footnotes and quotations may appear in 11-point type. Only one side of the paper may be used. Each paper shall contain a caption setting forth the name of the court, the county or location in which the action is pending, the docket number, the title of the case, and a brief descriptive title of the paper.

Committee Advisory Note

The Rule parallels the content of Rule 49 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (c) the words "of the Unified Criminal Docket" are added after the word "clerk" to enhance clarity.

Second, in subdivision (d) the words "Except as provided in Rule 12(b)(3)(A)" are added because of the unique filing requirements mandated by Rule 12(b)(3)(A).

Third, in subdivision (d) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Fourth, in subdivision (d) the words "his or her" following the word "entered" replace the word "their" as a matter of word choice.

Fifth, in subdivision (d) the final sentence is broken up into two sentences to enhance readability and clarity.

RULE 50. CLERICAL MISTAKES

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Law Court, and thereafter, while the appeal is pending may be so corrected with leave of the Law Court.

Committee Advisory Note

The Rule parallels the content of Rule 50 of the Maine Rules of Criminal Procedure except that "Law Court" replaces "appellate court" because the Superior Court no longer functions as an intermediate appellate court in the new unified Rules. The Law Court is now the sole appellate court. See Committee Advisory Note to M.R.U. Crim. P. 36.

RULE 51. EXCEPTIONS UNNECESSARY

Exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor; but if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Committee Advisory Note

The Rule mirrors the content of Rule 51 of the Maine Rules of Criminal Procedure.

RULE 52. HARMLESS ERROR AND OBVIOUS ERROR

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded.

(b) Obvious Error. Obvious errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Committee Advisory Note

The Rule mirrors the content of Rule 52 of the Maine Rules of Criminal Procedure.

RULE 53. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Unified Criminal Docket. The clerk shall keep the Unified Criminal Docket and shall enter therein each criminal proceeding. Proceedings shall be assigned docket numbers. Upon the filing of an indictment, information, or complaint with the court, the first and last name and middle initial, and, if known, the State Identification Number, the Arrest Tracking Number, the Charge Tracking Number, date of birth, and address of the defendant shall be entered upon the docket. Thereafter the name and address of the attorney appearing for any defendant shall be entered. All papers filed with the clerk, all appearances, pleas, motions, orders, verdicts, findings, and judgments shall be noted chronologically upon the Unified Criminal Docket and shall be marked with the docket number. The notations shall briefly show the nature of each paper filed, writ issued, plea entered, or motion made and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date of the judgment or order, the date the judgment or order was received by the clerk, and the date the notation is made.

(b) Custody of Papers by Clerk. The clerk shall be answerable for all records and papers filed with the court, and they shall not be taken from the clerk's custody without special order of the court; but the parties may at all times have copies.

(c) Other Books and Records. The clerk shall keep such other books and records as may be required from time to time by the Chief Justice of the Superior Court or the Chief Judge of the District Court.

Committee Advisory Note

The Rule parallels the content of Rule 53 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the heading to subdivision (a) is changed from "**Criminal Docket**" to "**Unified Criminal Docket**."

Second, in subdivision (a) the words "Unified Criminal Docket" replace the words "criminal docket."

RULE 53A. CUSTODY OF NONDOCUMENTARY EXHIBITS

(a) During Trial or Hearing. During trial or hearing the clerk of the Unified Criminal Docket shall retain custody of all nondocumentary exhibits offered in evidence, whether admitted or excluded.

(b) After Trial or Hearing. At the conclusion of trial, counsel and self-represented parties shall, to the extent practicable, make arrangements for the withdrawal of any nondocumentary exhibit from the custody of the clerk. If it is necessary to preserve any exhibit for purposes of appeal, counsel and self-represented parties shall, whenever possible, arrange for a photograph of the exhibit. If no substitution is made for a bulky exhibit, the appellant is responsible for its transportation.

(c) After Final Determination. After the final determination of any action, any remaining nondocumentary exhibit shall be removed from the custody of the clerk by the offering party, unless otherwise ordered by the court. If any such exhibit is not so removed within 63 days after final determination, the clerk may, after 14 days' notice to the offering party, dispose of the exhibit in a reasonable manner, including transfer to the State for disposition as abandoned property.

Committee Advisory Note

The Rule parallels the content of Rule 53A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the words "of the Unified Criminal Docket" are added following the word "clerk" to enhance clarity.

Second, in subdivision (c) the reference to "60 days" is changed to "63 days" to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

RULE 54. COURTS AND CLERKS

(a) Court Always Open. The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders.

(b) Clerk's Office. The clerk's office with the clerk or a deputy in attendance shall be open during such hours as the Chief Justice of the Superior Court or the Chief Judge of the District Court may designate on all days except Saturdays, Sundays, and legal holidays, and except such other days as the Chief Justice of the Superior Court or the Chief Judge of the District Court may designate.

Committee Advisory Note

The Rule mirrors the content of Rule 54 of the Maine Rules of Criminal Procedure.

RULE 55. VISITING LAWYERS

(a) In General. Any member in good standing of the bar of the highest court of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with a member of such other bar in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices, and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court.

(b) Appearances by Service Lawyers. With the written authorization (which may be general and not confined to a particular case) of the senior legal officer of any one of the armed services on active duty within the service district which includes this state, a member of the bar of any other state or of the District of Columbia on active duty with that armed service may appear in court in this state to represent, in defending against charges of Class D or Class E crimes, enlisted personnel on active duty of pay grades of E-4 and below who might not otherwise be able to afford proper legal assistance and who consent to such

representation. A copy of each such written authorization by the senior legal officer shall be filed with the clerk of the Law Court.

Committee Advisory Note

The Rule parallels the content of Rule 55 of the Maine Rules of Criminal Procedure except that in subdivision (b) the capital letter "C" in the word "clerk" is changed to the lower case.

RULE 56. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Permitted Activities on Behalf of a Criminal Defendant. An eligible law student may appear in court in this state, on behalf of any indigent person receiving legal services through an organization providing legal services to the indigent, which organization has been approved by the Supreme Judicial Court, if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following proceedings:

(1) Any criminal proceeding in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule. In such cases the supervising lawyer is not required to be personally present in court if the person on whose behalf the appearance is being made consents to the supervising lawyer's absence.

(2) Any criminal proceeding in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule. In such cases the supervising lawyer shall be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(3) Any post-conviction review proceeding, any proceeding on a post-conviction motion for DNA analysis, and any proceeding on a post-judgment motion by a person whose identity allegedly has been stolen and falsely used. In such cases the supervising lawyer shall be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(b) Permitted Activities on Behalf of the State. An eligible law student may appear in any criminal proceeding on behalf of the State with the written approval of the prosecuting attorney or the authorized representative of the

prosecuting attorney. If the defendant in a criminal proceeding has a right to counsel under any constitutional provision, statute, or rule and is represented by counsel in that criminal proceeding, the prosecuting attorney or the authorized representative of the prosecuting attorney is required to be personally present throughout the proceeding and shall be fully responsible for the manner in which it is conducted.

(c) Written Consent and Approval. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the court.

(d) Other Conditions. The provisions of Maine Rules of Civil Procedure 90(b), (c), (d), (e), (f), and (g), are hereby incorporated in this Rule.

Committee Advisory Note

The Rule parallels the content of Rule 56 of the Maine Rules of Criminal Procedure except that in subdivision (a)(3) proceedings on a post-conviction motion for DNA analysis and on a post-judgment motion by a person whose identity allegedly has been stolen and falsely used are added since these proceedings are similar in nature to post-conviction review proceedings. In subdivision (b) the letter "s" in the word "state" is capitalized because the word "State" in this context refers to a government actor. See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

RULE 57. DEFINITIONS

Unless otherwise specified, the following words or variants shall have the following meanings:

(a) Arrest Tracking Number (ATN). "Arrest Tracking Number" or "ATN" is a unique identifier for a formal action undertaken by a criminal justice agency that initiates criminal charges. If the criminal justice agency initiating criminal charges is a law enforcement agency, the formal action required is the custodial arrest and fingerprinting of the individual or the issuance or delivery to the individual of a Uniform Summons and Complaint. If the criminal justice agency initiating criminal charges is a prosecutorial office (District Attorney office or office of the Attorney General), the formal action is the filing of a complaint, the return of an indictment by a grand jury, or the filing of an information relative to an individual. The ATN is a seven-character alphanumeric field consisting of six numbers followed by one letter. The ATN is assigned by the Maine State Police

upon the request of a criminal justice agency. A request must be made through the Maine Telecommunications and Radio Operations (METRO) system. The following criminal charges do not require an ATN: any Class D or Class E crime in title 12 or title 29-A other than a Class D or Class E crime involving hunting while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile, or motor vehicle while under the influence of intoxicating liquor or drugs or with excessive blood-alcohol level.

(b) Attorney for the State. "Attorney for the State" means the Attorney General, any authorized full-time or part-time deputy attorney general, assistant attorney general or staff attorney; a district attorney or any authorized full-time or part-time deputy or assistant of a district attorney; or such other person or persons as may be authorized by law to act as representatives of the State of Maine in a criminal proceeding.

(c) Charge Tracking Number (CTN). "Charge Tracking Number" or "CTN" is a unique identifier that designates each charge associated with the formal action undertaken by a criminal justice agency initiating criminal charges that is designated by the ATN. The CTN is a three-character numeric field assigned to each charge and is added to the ATN with no hyphen or slash separating the two. The CTN is assigned by the Maine State Police upon the request of a criminal justice agency. A request must be made through the Maine Telecommunications and Radio Operations (METRO) system. A criminal charge that does not require an ATN under subdivision (a) of this Rule does not require a CTN.

(d) Court. "Court" means both a Superior Court justice and a District Court judge unless the context clearly indicates only one or the other. "Court" also means the Superior Court or the District Court when used in this context.

(e) District Court Judge. "District Court Judge" includes a justice or active retired justice of the Supreme Judicial Court or a justice or active retired justice of the Superior Court sitting in the District Court by assignment.

(f) State Identification Number. "State Identification Number" means the number assigned to a person by the State Bureau of Identification when the person first becomes known to the Bureau. Events reported to the State Bureau of Identification that cause the assignment of a "State Identification Number" to a person by the Bureau include the custodial arrest and fingerprinting or the issuance or delivery of a Uniform Summons and Complaint as reported by a law

enforcement agency, the filing of a complaint, the return of an indictment by a grand jury, or the filing of an information relative to an individual as reported by a prosecutorial office (District Attorney office or office of the Attorney General), the final disposition of a case as reported by the courts, and the intake of an inmate by the Department of Corrections.

(g) Superior Court Justice. "Superior Court Justice" includes a justice or active retired justice of the Supreme Judicial Court or a judge or active retired judge of the District Court sitting in the Superior Court by assignment.

(h) Statute Sequence Number. "Statute Sequence Number" means the unique number assigned by the Maine Judicial Information System (MEJIS) to each crime and crime variant contained in Maine statutes. A criminal charge that does not require an ATN under subdivision (a) of this Rule does not require a "Statute Sequence Number."

Committee Advisory Note

The Rule parallels the content of Rule 57 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (b) the letter "s" in the word "state" is capitalized because the word "State" in this context refers to a government actor. See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

Second, a new subdivision (d) is added that defines the word "court." The definition uses the word in two different senses. The first (and most often appearing in the new Rules) defines "court" to mean both a Superior Court justice and a District Court judge collectively unless the context clearly indicates one or the other. The second defines "court" to mean the trial court—i.e., the Superior Court or the District Court—when employed in this context.

Third, because subdivision (d) is added to define "court," the subdivisions for "District Court Judge," "State Identification Number," and "Superior Court Justice" are redesignated (e), (f), and (g) respectively.

Fourth, a new subdivision (h) is added that defines "Statute Sequence Number." The number is unique and assigned by the Maine Judicial Information System (MEJS) to each crime and crime variant contained in Maine statutes. A criminal charge that does not require an ATN under subdivision (a) of the Rule

does not require a Statute Sequence Number. Pursuant to Rule 3(g) each count of the complaint, indictment, or information must set forth the Statute Sequence Number.

RULES 58 TO 64. [RESERVED]

X. PROCEEDINGS FOR POST-CONVICTION REVIEW

RULE 65. NATURE OF THE PROCEEDING

An action for post-conviction review pursuant to 15 M.R.S. ch. 305-A shall be docketed by the clerk in the Unified Criminal Docket.

Committee Advisory Note

The Rule parallels the content of Rule 65 of the Maine Rules of Criminal Procedure except that "in the Unified Criminal Docket" replaces "on the criminal docket of the Superior Court."

RULE 66. PREREQUISITES TO AN ADJUDICATION ON THE MERITS

A petitioner must satisfy the following five statutory prerequisites to permit an adjudication on the merits by the assigned court:

(1) Restraint or impediment under 15 M.R.S. § 2124;

(2) Prior exhaustion of remedies incidental to the proceedings in the trial court, or on appeal, or through administrative remedies as required by 15 M.R.S. § 2126;

(3) Absence of waiver of grounds for relief under 15 M.R.S. § 2128 except as exempted under 15 M.R.S. § 2128-A;

(4) Timely filing of the petition under 15 M.R.S. § 2128-B; and

(5) The stating of a ground upon which post-conviction relief can be granted under 15 M.R.S. § 2125.

Committee Advisory Note

The Rule parallels the content of Rule 66 of the Maine Rules of Criminal Procedure except "the assigned court" replaces the reference to "an assigned justice." The new Rules do not carry over the use of the words "assigned justice" nor do they carry over Rule 69A(d) of the Maine Rules of Criminal Procedure, which includes an assigned judge in the term "assigned justice" where appearing in Part X. Instead, it relies upon the term "court" as now defined in Rule 57(d). See also Committee Advisory Note to M.R.U. Crim. P. 57(d).

RULE 67. FORM AND CONTENTS OF THE PETITION

(a) Form Prescribed by Supreme Judicial Court. The petition shall be in the form prescribed by the Supreme Judicial Court.

(b) Challenges Allowed in Single Petition. The petition shall be limited to the assertion of a claim for review of one or more criminal judgments arising from a single trial or from a single proceeding for the entry of one or more pleas of guilty or nolo contendere, or of a single post-sentencing proceeding under 15 M.R.S. § 2124(2). If a petitioner desires to attack the validity of criminal judgments arising from two or more trials or plea proceedings or two or more post-sentencing proceedings, the petitioner shall do so by separate petitions. The court in its discretion may order separate consideration of criminal judgments challenged in the same petition or may order consideration together of criminal judgments or post-sentencing proceedings which are challenged in separate petitions.

(c) Designation of Respondent. The petition shall designate the State of Maine as the respondent.

(d) Identification of Criminal Judgment, Post-sentencing Proceeding, Court, and Date. The petition shall identify the criminal judgment that is challenged. If the petition challenges a post-sentencing proceeding, it shall identify both the post-sentencing proceeding and the original criminal judgment that generated the post-sentencing proceeding. The petition must include the name of the case, the docket number, the date of entry of judgment, and the date of imposition of sentence, and must identify the Unified Criminal Docket in which the criminal judgment was entered, or if the criminal judgment was entered prior to unification, the petition shall identify the county or region where the judgment was entered.

(e) Prerequisites to an Adjudication on the Merits; Reasons for Relief and Facts in Support Thereof. The petition shall briefly address the five statutory prerequisites to an adjudication on the merits identified in Rule 66. It shall briefly state each ground for relief and the essential facts in support of each ground. Argument, citation, and discussion of legal authorities shall be omitted from the petition but may be filed in a separate document.

(f) Specification of Relief Sought. The petition shall specify the relief requested. Failure to specify the precise relief requested or failure to specify the appropriate relief available shall not preclude the court from granting any relief to which the petitioner may be entitled.

Committee Advisory Note

The Rule parallels the content of Rule 67 of the Maine Rule of Criminal Procedure but differs in the following respects.

First, in subdivision (d), first and second sentences, the word "that" replaces the word "which" to reflect modern usage.

Second, in subdivision (d), the final sentence combines the last two sentences of Rule 67 of the Maine Rules of Criminal Procedure. It clarifies what the petition must include, uses "Unified Criminal Docket" to replace "the court and the county or division" and adds the words "or if the criminal judgment was entered prior to unification, the petition shall identify the county or region where the judgment was entered."

Third, in subdivision (f) the word "court" replaces the reference to "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 66.

RULE 68. FILING OF THE PETITION

The petition shall be filed as provided in 15 M.R.S. § 2129(1)(A).

Committee Advisory Note

The Rule mirrors the content of Rule 68 of the Maine Rules of Criminal Procedure.

RULE 69. ASSIGNED COUNSEL

(a) Compliance With 15 M.R.S. ch. 305-A by Petitioner. A petitioner who desires to have counsel appointed either before or after final disposition of the petition shall comply with the procedure provided in 15 M.R.S. § 2129(1)(B).

(b) Determination of Indigency; Assignment and Compensation of Counsel. The determination of indigency and the assignment and compensation of counsel shall be governed by the provisions of Rules 44 and 44A.

(c) Continuing Duty of Counsel to Represent Petitioner. Counsel assigned by the court before final disposition of the petition shall continue to represent the petitioner on appeal unless relieved by order of the court or the Law Court.

Committee Advisory Note

The Rule parallels the content of Rule 69 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the word "appointed" replaces the word "assigned."

Second, in subdivision (c) the word "court" replaces the reference to "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 66.

RULE 69A. ASSIGNED JUSTICE OR JUDGE

(a) Assignment by Chief Justice of the Superior Court or by Designee. The Chief Justice of the Superior Court or the Chief Justice's designee shall assign petitions for post-conviction review.

(b) Assignment of Trial Justice or Judge.

(1) When the petition addresses a conviction in the trial court, the trial justice or trial judge who imposed sentence or ordered commitment under 15 M.R.S. § 103 may be assigned to the post-conviction review proceeding unless the trial justice or trial judge is disqualified or is otherwise unavailable.

(2) When the petition addresses a juvenile proceeding in the District Court, the trial judge who imposed juvenile disposition may be assigned to the

specifically to hear the post-conviction review proceeding, unless the judge is disqualified or is otherwise unavailable.

(c) Assignment Other Than of the Trial Justice or Trial Judge. If the trial justice or trial judge is not assigned under subdivision (b), the petition for post-conviction review may be assigned to any justice or judge.

Committee Advisory Note

The Rule parallels the content of Rule 69A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, subdivision (b)(1) now addresses assignment in the context of any trial court, not assignments in the Superior Court only. Thus "trial court" replaces the reference to "Superior Court" and "or trial judge" is added after "trial justice."

Second, because of the subdivision (b)(1) changes, subdivision (b)(2) now addresses juvenile proceeding assignments only.

Third, subdivision (c) is changed both by adding the word "trial" before the word "judge" and by eliminating the possibility of assignments "to the regular criminal docket."

Fourth, subdivision (d) is not carried over because it is no longer needed given the new definition of "court" in Rule 57(d).

RULE 70. REVIEW OF THE PETITION BY THE COURT; SUMMARY DISMISSAL; RESPONSE; AMENDMENT TO THE PETITION; WITHDRAWAL OF PETITION; DISMISSAL OF PETITION WITH PREJUDICE FOR FAILURE TO PROSECUTE

(a) Review of Petition by the Court. The court shall promptly examine the petition.

(b) Summary Dismissal or Stay of the Petition. The court shall enter an order for the summary dismissal of the petition in whole or in part, stating the reasons for the dismissal, if from the face of the petition and any exhibits attached to it, the petition affirmatively discloses

(1) No restraint or impediment under 15 M.R.S. § 2124;

(2) Waiver of grounds for relief under 15 M.R.S. § 2128 and discloses no exception under 15 M.R.S. § 2128-A;

(3) Failure to adhere to the filing deadline under 15 M.R.S. § 2128-B; if subsection 1, paragraph C is triggered, further discloses a failure to exercise due diligence; or

(4) No ground upon which post-conviction relief can be granted under 15 M.R.S. § 2125.

The court shall cause the petitioner to be notified of the dismissal and the reasons for it.

In the event that the face of the petition and any exhibits attached to it affirmatively disclose one or more unexhausted remedies incidental to the proceedings in the trial court, or on appeal, or administrative remedies under 15 M.R.S. § 2126, the court shall, except as otherwise specifically provided in 15 M.R.S. § 2126 regarding an appeal from a judgment of conviction, a juvenile adjudication, or a judgment of not criminally responsible by reason of insanity, either enter an order for the summary dismissal of the petition or enter an order staying the post-conviction review proceeding pending exhaustion, depending upon which alternative the court determines to be most appropriate under the circumstances. The court shall cause the person to be notified of the dismissal or stay and of the duty to exhaust.

(c) Response; Amendment to Petition. If the petition is not summarily dismissed pursuant to subdivision (b), the respondent shall file a response as follows:

(1) If the petitioner has been represented by counsel at the time of the filing of the petition or the petitioner does not desire to retain counsel, or, if indigent, to have counsel assigned, the court shall order the respondent to file a response pursuant to Rule 71 within 21 days of the date the order is received.

(2) If the petitioner has not been represented by counsel at the time of the filing of the petition but expresses an intent to retain counsel forthwith or has made application to have counsel assigned pursuant to Rule 69, the court shall provide the nonindigent petitioner the opportunity to retain counsel or shall assign counsel for the indigent petitioner. Within 42 days of the date counsel enters appearance

or is assigned, counsel shall file either an amended petition or notice that no amended petition is to be filed. Additional time may be granted by the court for cause shown before or after the time has expired, with or without motion and notice. Following the filing of an amended petition or notice that no amended petition is to be filed, the clerk of the Unified Criminal Docket shall mail a copy thereof to the respondent. Within 21 days of receipt of such copy, the respondent shall file a response pursuant to Rule 71.

(3) Following the filing of a response by respondent pursuant to paragraphs (1) and (2) a petition may be further amended only by leave of the court for good cause shown. If the court allows a petition to be amended after the filing of a response, the respondent may, except as the court might otherwise provide pursuant to Rule 72A(b)(3), file an additional response within 14 days of receipt of the amended petition.

(d) Withdrawal of Petition. A petitioner, at any time prior to final disposition, may move to withdraw a petition without such a withdrawal operating as an adjudication upon the merits by filing a signed request. The court shall grant such motion in the absence of a showing by the respondent that it would be unfairly prejudiced thereby. A motion to withdraw without prejudice may be signed by petitioner's counsel rather than by the petitioner personally if the motion includes a representation by counsel that the petitioner has instructed counsel to seek a withdrawal of the petition.

(e) Dismissal of Petition for Failure to Prosecute. The court, on its own initiative or on motion of the respondent, after notice to the parties, and in the absence of a showing of good cause to the contrary by the petitioner, shall dismiss a petition for want of prosecution at any time more than one year after the last docket entry showing any action taken therein by the petitioner other than a motion for a continuance. Unless the court in the order for dismissal otherwise specifies, such dismissal shall operate as an adjudication upon the merits.

Committee Advisory Note

The Rule parallels the content of Rule 70 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the first segment in the heading to Rule 70 is changed from "**REVIEW OF THE PETITION BY ASSIGNED JUSTICE**" to "**REVIEW OF THE PETITION BY THE COURT."**

Second, the heading in subdivision (a) is changed from "**Review of Petition by Assigned Justice"** to "**Review of Petition by the Court.**"

Third, in subdivisions (a), (b), (c), (d), and (e) the word "court" replaces "assigned justice" as in the above-referenced headings because the term "court" is now expressly defined in Rule 57(d) to mean both "a Superior Court justice and a District Court judge" (or a variant thereof) unless the context clearly indicates only one or the other. See Committee Advisory Note to M.R.U. Crim. P. 57(d).

Fourth, in subdivision (c) "20 days" is changed to "21 days" in paragraph (1), "45 days" and "20 days" are changed to "42 days" and "21 days" respectively in paragraph (2), and "15 days" is changed to "14 days" in paragraph (3) in order to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

RULE 71. RESPONSE

(a) When Required. The respondent is required to respond to the original or amended petition only when directed to do so pursuant to Rule 70(c), or as may be further ordered to do so by the court pursuant to subdivision (c) of this Rule or Rule 72A(b)(3).

(b) Enlargement of Time to File. Notwithstanding the filing deadlines imposed pursuant to Rule 70(c), subdivision (c) of this Rule, or Rule 72A(b)(3), additional time may be granted by the court for cause shown, before or after the time has expired, with or without motion and notice.

(c) Contents of Response. Except as otherwise provided herein, the response must answer each of the grounds asserted in the petition. In addition, it must state whether any ground in the petition fails to satisfy one or more of the five statutory prerequisites to an adjudication on the merits identified in Rule 66. As to any such allegedly barred ground, the respondent may, in lieu of addressing its substantive merits in the response, move for its dismissal as part of the response. The court, upon review of the filed response, may order the respondent to supplement its filed response by addressing the merits of any allegedly barred ground and set the time within which the supplemental response is to be filed. Other than in the context of moving to dismiss a ground, the response shall not include argument, citation, and discussion of legal authorities, but they may be filed in a separate document.

(d) Materials Attached to or Filed With Response. Respondent must attach to its response or file with its response whatever further documents or other materials it is relying upon in support of any allegation of a barred ground. Respondent is encouraged to also include whatever further documents or other materials it believes may assist the court in adjudicating any nonbarred ground on the merits.

Committee Advisory Note

The Rule parallels the content of Rule 71 of the Maine Rules of Criminal Procedure except in all of its subdivisions the word "court" replaces "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 71A. FILING A RESPONSE SEEKING DISMISSAL; TIMELY DISPOSITION BY THE COURT

If the response filed by the respondent seeks a dismissal of the petition in whole or in part based upon a petitioner's alleged failure to satisfy one or more of the five statutory prerequisites to an adjudication on the merits identified in Rule 66, the court

(a) In the case of an alleged failure on the part of the petitioner to demonstrate exhaustion of remedies incidental to the proceeding in the trial court, or on appeal, or through administrative remedies, shall dispose of the dismissal request based upon the pleadings, any further amendment of the pleadings, and any other material of record. In the event the court determines that one or more pending or available unexhausted remedies exist, the court shall, except as otherwise specifically provided in 15 M.R.S. § 2126 regarding an appeal from a judgment of conviction, a juvenile adjudication, or a judgment of not criminally responsible by reason of insanity, either grant the respondent's dismissal request or stay the post-conviction review proceeding pending exhaustion, depending upon which alternative the court determines to be most appropriate under the circumstances.

(b) In the case of an alleged failure on the part of the petitioner to demonstrate one or more of the other statutory prerequisites, shall dispose of the dismissal request based upon the pleadings, any further amendment of the pleadings, and any other material of record unless the court determines that, as a matter of fairness to the petitioner, disposition should await an evidentiary hearing.

Committee Advisory Note

The Rule parallels the content of Rule 71A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the last segment in the heading to Rule 71A is changed from "**TIMELY DISPOSITION BY ASSIGNED JUSTICE**" to "**TIMELY DISPOSITION BY THE COURT.**"

Second, the word "court" replaces "assigned justice" whenever appearing, as in the heading to the Rule. See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 72. DISCOVERY

(a) In General. A party shall not be entitled to discovery in a proceeding for post-conviction review unless, and to the extent that, the court, upon motion and for good cause shown, grants leave for discovery. If leave for discovery is granted, the court shall specify the appropriate means of discovery, provided that depositions shall be ordered only pursuant to Rule 15.

(b) Discovery From Former Defense Counsel. If ineffective assistance of counsel is a ground of the petition and the respondent needs discovery from that defense counsel, the respondent may move for discovery, including an order requiring defense counsel to answer questions intended to allow the respondent to evaluate and respond to the petitioner's assertions of ineffective assistance. The motion shall state the nature of the disclosure sought and why it is needed. The motion shall be granted by the court for good cause shown. If leave for discovery is granted, the court shall specify the means, scope, and timing of discovery to be employed.

Committee Advisory Note

The Rule parallels the content of Rule 72 of the Maine Rules of Criminal Procedure except that in all of its subdivisions the word "court" replaces "assigned justice" wherever appearing. See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 72A. CONFERENCE FOLLOWING THE FILING OF THE PLEADINGS

(a) Scheduling. Following the filing of the pleadings, the clerk of the Unified Criminal Docket shall as soon as possible schedule a conference and give notice to the parties thereof. The court may dispense with a conference.

(b) Matters to Be Considered at Conference. The court and the parties shall consider the following matters at the conference and the court shall enter an order which shall state the action taken by the court or agreed upon by the parties with respect to each of the said matters:

(1) The court's action in disposing of all motions pending at the time of the conference.

(2) The court's action with respect to the filing by the parties of further motions and the date by which such filings shall be accomplished.

(3) Any instruction of the court to the parties with respect to further amendment of the pleadings in the case and the date by which such further amendment of the pleadings shall be completed.

(4) The record upon which the final disposition of the petition is to be made by the court.

(5) The court's determination as to whether an evidentiary hearing is required.

(6) The time and place of the evidentiary hearing.

(7) A list of all witnesses to be called by the parties at the evidentiary hearing. The assigned justice or judge shall specify a date by which notice shall be given to the court and the opposing party of any additions to this list of witnesses by any party.

(8) If there is to be no dispositional hearing, unless dispensed with by the parties and the court, the briefing schedule, including oral argument.

(9) The court may direct that the expected testimony of some or all of the expected witnesses be presented to the court by affidavit sworn by the expected witness, and schedule a further conference to determine, after receipt and review of

the affidavits, if the expected evidence justifies proceeding to a live testimonial hearing or if the matter may be resolved based on affidavits and briefing.

Committee Advisory Note

The Rule parallels the content of Rule 72A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) "clerk of the Unified Criminal Docket" replaces "clerk of the Superior Court."

Second, in both subdivisions the word "court" replaces "assigned justice" wherever appearing. See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 73. EVIDENTIARY HEARING, BRIEFS, AND ARGUMENTS

(a) Evidentiary Hearing. At the time of the conference, or if a conference is dispensed with, within 28 days of the date the response is filed, either the petitioner or the respondent may request an evidentiary hearing. If either party makes such a request, the court shall, after a review of the pleadings and any other material of record, determine whether an evidentiary hearing is required. If the court determines that an evidentiary hearing is required, the hearing may be ordered held in any place open to the public in any county.

(b) Time for Briefs When No Hearing. Unless a briefing schedule has earlier been incorporated in an order arising out of the conference, if no request for an evidentiary hearing has been made or if the court determines no evidentiary hearing is required, the clerk shall send a briefing schedule to the parties as follows: The petitioner's brief shall be filed within 28 days after the last day on which a hearing could have been requested; the respondent shall file its brief within 28 days after receipt of the petitioner's brief; and the petitioner may file a reply brief within 14 days after receipt of the respondent's brief.

(c) Time for Briefs When Hearing Held. Unless otherwise ordered by the court, if an evidentiary hearing is held the petitioner's brief shall be filed within 28 days of the close of the hearing; the respondent shall file its brief within 28 days of receipt of the petitioner's brief; and the petitioner may file a reply brief within 14 days after receipt of the respondent's brief.

(d) Oral Argument. Unless dispensed with by the court, if no evidentiary hearing is held the clerk shall schedule oral argument on the next available date after the last brief is received. Oral argument may be waived by the parties.

Committee Advisory Note

The Rule parallels the content of Rule 73 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivisions (a), (b), and (c) "30 days" is changed to "28 days" in order to reflect the Court's preference for calculating time periods for rule purposes in increments of 7 rather than increments of 5.

Second, in all of its subdivisions, the word "court" replaces "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 73A. MOTION FOR JUDGMENT

After the petitioner has completed the presentation of evidence at the hearing on the petition, the respondent, without waiving its right to offer evidence in the event the motion is not granted, may move for judgment on the ground that upon the facts and the law the petitioner has shown no right to relief.

Committee Advisory Note

The Rule mirrors the content of Rule 73A of the Maine Rules of Criminal Procedure.

RULE 74. BAIL PENDING FINAL DISPOSITION OF THE PETITION

(a) Application to the Court. A petitioner may apply to the court for bail pending final disposition.

(b) Standards Governing Bail. The court may order the release of the petitioner on bail if:

(1) the court is satisfied, on the basis of the pleadings, or the pleadings supplemented by any evidence received at a hearing on the petition pursuant to Rule 73, that the petitioner has a reasonable likelihood of prevailing on the petition;

(2) release on bail is appropriate given the crime and the nature of the ultimate relief contemplated by the court if the petitioner were to prevail; and

(3) the standards and conditions governing bail contained in 15 M.R.S. § 1051(2) and (3) are satisfied.

(c) Revocation of Bail Pending Final Disposition of Petition. The court may revoke an order of bail granted pending final disposition of the petition upon determination made after notice and opportunity for hearing that

(1) The petitioner has violated a condition of bail or

(2) The petitioner has been charged with a crime allegedly committed while the petitioner was on release pending final disposition of the petition.

Committee Advisory Note

The Rule parallels the content of Rule 74 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the heading to subdivision (a) is changed from "**Application to Assigned Justice**" to "**Application to the Court.**"

Second, in all of its subdivisions the word "court" replaces "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 75. BAIL PENDING APPEAL WHEN RELIEF IS GRANTED TO THE PETITIONER

(a) Application to the Court. A petitioner who has been granted relief may apply to the court for bail pending appeal.

(b) Standards Governing Bail Pending Appeal. The court may order the release of the petitioner on bail pending appeal when relief has been granted to the petitioner if the requirements of Rule 74(b)(2) and (3) are satisfied.

(c) Revocation of Bail Granted Pending Appeal. The court may revoke an order of bail granted pending appeal pursuant to Rule 74(c).

Committee Advisory Note

The Rule parallels the content of Rule 75 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, the heading to subdivision (a) is changed from "**Application to Assigned Justice**" to "**Application to the Court.**"

Second, in all subdivisions the word "court" replaces "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 70.

RULE 75A. STAY OF EXECUTION

(a) Bail Pending Final Disposition. If the court orders the release of the petitioner on bail pending final disposition of the petition pursuant to Rule 74(b) and the petitioner is admitted to bail, the sentence is automatically stayed. If the final judgment is adverse to the petitioner, the stay automatically terminates when the judgment making final disposition is entered in the Unified Criminal Docket. When a stay of sentence of imprisonment is so terminated, the clerk of the Unified Criminal Docket shall forthwith mail a date-stamped copy of the judgment making final disposition to the parties and to the sheriff named in the underlying commitment order. Within 3 days after that mailing, excluding Saturdays, Sundays and legal holidays, the petitioner's counsel or, if not represented by counsel, the petitioner shall contact the office of the sheriff named in the underlying commitment order and make arrangements satisfactory to the sheriff for surrendering into that sheriff's custody that day or, at the direction of the sheriff, the next regular business day. If such arrangements are not timely made, or if the arrangements are not complied with, upon the request of the named sheriff or the attorney for the respondent, or by direction of the court, the clerk of the Unified Criminal Docket shall issue a warrant for the petitioner's arrest. Upon issuance of that warrant and necessary notice by the clerk to the court of that fact, the court, in conformity with Rule 46(g)(1), shall declare a forfeiture of the Rule 74 bail because of the breach of condition.

(b) Bail Pending Appeal. If the court orders the release of the petitioner on bail pending appeal pursuant to Rule 75(b) and the petitioner is admitted to bail, execution of the sentence shall be stayed as provided in Rule 38(a) and (b). The procedure for the petitioner's surrender following automatic termination of a stay of sentence of imprisonment is as provided in subdivision (a).

Committee Advisory Note

The Rule parallels the content of Rule 75A of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in both subdivisions (a) and (b) the word "court" replaces "assigned justice." See Committee Advisory Note to M.R.U. Crim. P. 70.

Second, in subdivision (a) "Unified Criminal Docket" replaces "criminal docket" for clarity.

RULES 76 TO 84. [RESERVED]

XI. EXTRADITION PROCEEDINGS

RULE 85. NATURE OF THE PROCEEDINGS

A petition contesting extradition pursuant to 15 M.R.S. § 210 shall be docketed by the clerk in the Unified Criminal Docket.

Committee Advisory Note

The Rule parallels the content of Rule 85 of the Maine Rules of Criminal Procedure except that "clerk in the Unified Criminal Docket" replaces "clerk on the criminal docket of the District Court or in the unified docket of a court with a unified criminal docket."

RULE 86. ASSIGNMENT OF COUNSEL

The determination of indigency, the appointment and compensation of counsel, and the continuing duty of counsel to represent petitioner shall be governed by 4 M.R.S. §§ 1801-1804, and by the provisions of Rules 44, 44A, and 44B.

Committee Advisory Note

The Rule parallels the content of Rule 86 of the Maine Rules of Criminal Procedure except that a reference to 4 M.R.S. §§ 1801-1804 is added regarding the Maine Commission on Indigent Legal Services.

RULE 87. DISCOVERY

Upon written request petitioner is entitled to receive copies of the Governor's warrant, the demand for extradition, and all documents in support thereof. A party is not otherwise entitled to discovery except upon motion and a showing of good cause why such discovery should be allowed.

Committee Advisory Note

The Rule mirrors the content of Rule 87 of the Maine Rules of Criminal Procedure.

RULES 88 TO 94. [RESERVED]

XII. POST-CONVICTION MOTION FOR DNA ANALYSIS; NEW TRIAL HEARING

RULE 95. INITIATION OF PROCEEDINGS

(a) Person Entitled to Bring a Motion; Filing and Service. Any person who satisfies the prerequisites of 15 M.R.S. § 2137 may file a motion for DNA analysis as provided under 15 M.R.S. § 2138(1). Filing and serving must be in accordance with Rule 49.

(b) Docketing and Assignment. A post-conviction motion for DNA analysis pursuant to 15 M.R.S. ch. 305-B shall be docketed by the clerk in the Unified Criminal Docket. The motion shall be assigned as provided under 15 M.R.S. § 2138(1).

Committee Advisory Note

The Rule parallels the content of Rule 95 of the Maine Rules of Criminal Procedure except that in subdivision (b), first sentence, "Unified Criminal Docket" replaces the words "underlying criminal proceeding," and in the second sentence the word "under" replaces the words "pursuant to."

RULE 96. ASSIGNMENT OF COUNSEL

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

(b) Determination of Indigency; Assignment 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 4 M.R.S. §§ 1801-1804 and by the provisions of Rules 44, 44A, and 44B.

Committee Advisory Note

The Rule parallels the content of Rule 96 of the Maine Rules of Criminal Procedure except that in subdivision (b) a reference to 4 M.R.S. §§ 1801-1804 is added regarding the Maine Commission on Indigent Legal Services. See also M.R.U. Crim. P. 86.

RULE 97. INITIAL TRIAL COURT PROCEEDINGS

(a) Order Preserving Evidence. Following the filing of a motion for DNA analysis the court shall order the State to preserve evidence and prepare and submit an evidence inventory as provided under 15 M.R.S. § 2138(2).

(b) Court Findings; Order Directing Crime Lab to Perform DNA Analysis. Pursuant to 15 M.R.S. § 2138(5), the court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a motion to order DNA analysis. If the court determines that the person has satisfied the burden of proof required under 15 M.R.S. § 2138(4), the court shall order the crime lab to perform DNA analysis on the identified evidence and on a DNA sample obtained from the person.

(c) Payment of Cost of DNA Analysis. In the case of an indigent person, the cost of the DNA analysis shall be paid by the crime lab. A nonindigent person or a person found by the court to have the financial means with which to bear a portion of the cost of the DNA analysis shall make satisfactory financial arrangements with the crime lab within 14 days of the filing of the court order directing the crime lab to perform DNA analysis. Determination of indigency shall be governed by Rule 44A.

Committee Advisory Note

The Rule mirrors the content of Rule 97 of the Maine Rules of Criminal Procedure.

RULE 98. DNA ANALYSIS RESULTS

(a) Compliance With 15 M.R.S. § 2138(8). The DNA analysis results shall be provided by the crime lab to the court, the person, and the attorney for the State. Upon motion by the person or the attorney for the State, the court may order that copies of the analysis protocols, laboratory procedures, laboratory notes, and other relevant records compiled by the crime lab be provided to the court, the person, and the attorney for the State.

(b) Analysis Results Other Than That the Person Is Not the Source of the Evidence. If the results of the DNA analysis are inconclusive or show that the person is the source of the evidence, the court shall deny any motion for a new trial as provided under 15 M.R.S. § 2138(8)(A).

(c) Analysis Results Showing the Person Is Not the Source of the Evidence. If the results of the DNA analysis show that the person is not the source of the evidence, the court shall assign counsel if the court finds that the person is indigent under Rule 96(b) and shall hold a hearing as provided under 15 M.R.S. § 2138(10).

(d) Request for Reanalysis by the Attorney for the State. If the analysis results show the person is not the source of the evidence, upon motion of the attorney for the State, the court shall order reanalysis of the evidence and shall stay the hearing pending the results of DNA analysis.

Committee Advisory Note

The Rule parallels the content of Rule 98 of the Maine Rules of Criminal Procedure except that in subdivision (d) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f).

RULE 99. HEARING; COURT FINDINGS; NEW TRIAL GRANTED OR DENIED

At the conclusion of the hearing held as provided under 15 M.R.S. § 2138(10), the court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person a new trial as required under 15 M.R.S. § 2138(10).

Committee Advisory Note

The Rule mirrors the content of Rule 99 of the Maine Rules of Criminal Procedure.

RULES 100 TO 104. [RESERVED]

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.

(b) Docketing and Assignment of Post-Judgment Motion. The post-judgment motion shall be docketed by the clerk in the Unified Criminal Docket 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 justice or judge shall determine upon whom and how service of the post-judgment motion is to be made and enter an order in this regard.

Committee Advisory Note

The Rule parallels the content of Rule 105 of the Maine Rules of Criminal Procedure but differs in the following respects.

First, in subdivision (a) the letter "s" in the word "state" is capitalized because the word is used in the term "attorney for the State." See Committee Advisory Note to M.R.U. Crim. P. 3(d) and (f). Further, the references to subdivisions (d) and (e) of Rule 49 are omitted in order that all of Rule 49 apply.

Second, in subdivision (b) the words "clerk of the Unified Criminal Docket" replaces the words "clerk of the underlying criminal proceeding."

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 assign counsel at any time during the proceedings.

(b) Determination of Indigency; Assignment and Compensation; Continuing Duty to Represent. The determination of indigency, the assignment of and compensation of counsel, and the continuing duty of counsel to represent the person shall be governed by 4 M.R.S. §§ 1801-1804 and by the provisions of Rules 44, 44A, and 44B.

Committee Advisory Note

The Rule parallels the content of Rule 106 of the Maine Rules of Criminal Procedure except that in subdivision (b) a reference to 4 M.R.S. §§ 1801-1804 is added regarding the Maine Commission on Indigent Legal Services. See also M.R.U. Crim. P. 86.

RULE 107. REPRESENTATION OF THE STATE

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

Committee Advisory Note

The Rule parallels the content of Rule 107 of the Maine Rules of Criminal Procedure except that the letter "s" in the word "State" is capitalized because the word is referring to the "State" as a party.

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).

Committee Advisory Note

The Rule mirrors the content of Rule 108 of the Maine Rules of Criminal Procedure.

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. § 2183(7).

Committee Advisory Note

The Rule mirrors the content of Rule 109 of the Maine Rules of Criminal Procedure.

XIV. CIVIL VIOLATIONS

RULE 110. CIVIL VIOLATIONS

(a) Applicability. The Maine Rules of Civil Procedure shall apply to civil violation proceedings in the Unified Criminal Docket, other than traffic infraction proceedings; provided, however, that this Rule, so far as applicable, shall supersede the general provisions of the rules in all such proceedings where the amount of the fine, penalty, forfeiture, or other sanction that may be assessed for each separate violation is $1,000 or less. "Civil violation" has the meaning set forth in 17-A M.R.S. § 4-B.

(b) Commencement of Proceedings. A proceeding under this Rule shall be commenced by one of the following methods:

(1) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this Rule and served upon the defendant within the state by any officer authorized to enforce a statute or ordinance to which this Rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. Service under this paragraph shall be made upon an individual by delivering a copy of the citation to the individual personally and, if the defendant is an incompetent person, personally to the appropriate individual specified in Rule 4(d)(3) of the Maine Rules of Civil Procedure. Service under this paragraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rules 4(d)(4) through (10) of the Maine Rules of Civil Procedure.

(2) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this Rule by any officer authorized to enforce a statute or ordinance to which this Rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. The officer may cause the citation to be served by any method provided in Rule 4(d), (e), (f), (g), or (j) of the Maine Rules of Civil Procedure.

The officer serving the citation shall not take the defendant into custody, except as temporary detention is authorized by 17-A M.R.S. § 17. As soon as practicable after service upon the defendant, the officer shall cause the original of the citation to be filed with the clerk of the Unified Criminal Docket. No filing fee is required. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision that enacted such ordinance.

(c) Content of Citation and Complaint.

(1) A citation to be served as provided in subdivision (b) of this Rule shall contain the name of the defendant; the time and place of the alleged violation; a brief description of the violation; the time, place and date the defendant is to appear in court, which shall in no case be less than 7 days from the date of service unless the defendant agrees to a shorter period of time; and the signature of the officer issuing the citation.

(2) The citation shall serve as a complaint, and no other summons, complaint, or pleading shall be required, but motions for appropriate amendment of

the complaint shall be freely granted. Any form that contains the elements specified in paragraph (1) of this subdivision shall be sufficient under the Rules.

(d) Pleadings of Defendant.

(1) *Oral*. Unless the matter has been previously disposed of as provided in paragraph (3) of this subdivision, the defendant shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally. At a defendant's initial appearance before the court, the defendant shall be informed by the court that if the defendant is adjudicated to have committed the civil violation and if a fine is imposed by the court, immediate payment of the fine in full is required.

(2) *No Joinder*. Proceedings pursuant to this Rule may not be joined with any actions other than another proceeding pursuant to this Rule or a related criminal matter, nor shall a defendant file any counterclaim.

(3) *Judgment on Acceptance of Admission*. The clerk of the Unified Criminal Docket may accept, at the signed request of the defendant, an admission upon payment of a fine as set by the justice or judge in that particular case or as set accordance with a schedule of fines for civil violations established by the Chief Judge for the District Court for civil violations.

(e) Venue. A civil violation proceeding shall be brought in the division in which the violation is alleged to have been committed.

(f) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(g) Standard of Proof. Adjudication of a civil violation shall be by a preponderance of the evidence.

(h) Default.

(1) *Entry of Default*. If the defendant fails to appear as required by this Rule, the justice or judge shall enter the defendant's default, adjudicate that the defendant has committed the civil violation alleged, and impose a fine as set by the justice or judge for that particular case or as set in accordance with a schedule of fines for civil violations established by the Chief Judge of the District Court.

(2) *Setting Aside the Default*. For good cause shown, the court may set aside the default and adjudication under Rules 55(c) and 60(b) of the Maine Rules of Civil Procedure, as applicable. If it is determined that, due to the operation of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a default should not have been entered, the court shall vacate the adjudication, strike the default and all costs assessed, vacate any license suspension, and permit the defendant an opportunity to answer.

(i) Appeal. A party entitled to appeal may do so as in other civil actions.

(j) Costs. Costs shall not be awarded as in other civil actions. Only those costs expressly authorized by statute shall be imposed.

(k) Notice of Orders or Judgments. The clerk is not required to serve a notice of the entry of an order or judgment on the state or municipality. The clerk is not required to serve a notice of the entry of an order or judgment on the defendant when the defendant, in writing, admits the violation or when the defendant, personally or through counsel, appears in court and is informed by the court of the judgment or order.

Committee Advisory Note

The Rule parallels the content of Rule 80H of the Maine Rules of Civil Procedure but differs in the following respects.

First, in subdivision (a) the words "The Maine Rules of Civil Procedure" replace the words "These rules," and "Unified Criminal Docket" replace the words "District Court."

Second, in subdivision (b)(1) and (2) the words "the Maine Rules of Civil Procedure" replace the words "these rules."

Third, in subdivision (b)(2) the words "clerk of the Unified Criminal Docket" replaces the word "court."

Fourth, in subdivision (c)(2), the word "that" replaces the word "which" to reflect modern usage.

Fifth, in subdivision (d)(2), the word "may" replaces the word "shall" to reflect modern usage.

Sixth, in subdivision (d)(3) the words "clerk of the Unified Criminal Docket" replace the words "District Court Clerk," the words "justice or" are added before the word "judge," and the words "for the District Court for civil violations" replace the words "for various categories of civil violations."

Seventh, in subdivision (h)(1) the capital letter "R" in the word "Rule" is converted to lower case and the words "justice or" are added before the word "judge."

Eighth, in subdivision (h)(2), the words "Rules 55(c) and 60(b) of the Maine Rules of Civil Procedure" replace M.R. Civ. P. 55(c) and 60(b)."

Ninth, in subdivision (k) the capital letter "S" in the word "State" is converted to lower case because "state" in this context does not refer to a governmental actor or a party.

RULE 111. SEARCH WARRANTS FOR SCHEDULE Z DRUGS

(a) Issuance of Search Warrant. A search warrant may be issued under this Rule by any justice or judge to search for and seize any schedule Z drug that is declared to be contraband and subject to seizure by 17-A M.R.S. § 1114. Rule 41(a), (c), (d), (e), (f), and (g) of these Rules shall govern the issuance and execution of any warrant authorized by this Rule.

(b) Suppression of Evidence. In a proceeding under a statute that makes the possession of a schedule Z drug a civil violation a justice or judge may, with the consent of both parties, entertain a motion to suppress evidence prior to trial. If a question concerning the admissibility of evidence has not been determined by motion to suppress prior to trial, upon appropriate objection, it shall be determined by the justice or judge at the time of trial.

Committee Advisory Note

The Rule parallels the content of Rule 80I of the Maine Rules of Civil Procedure but differs in the following respects.

First, in subdivision (a) the words "these Rules" replace the words "of the Maine Rules of Criminal Procedure."

Second, in subdivision (b) the words "justice or judge" replace the words "District Court Judge."

Dated: December 18, 2014 FOR THE COURT[1]

/s/
LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
Associate Justices

[1] The Maine Rules of Unified Criminal Procedure Order is approved after conference of the Court, all Justices concurring therein.