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

2014 Me. Rules 05

Effective: September 1, 2014, except for amendment 1, adopting Rule 16C, which shall be effective for all complaints filed on or after January 1, 2015

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

1. Maine Rule of Civil Procedure 16C is adopted to read as follows:

RULE 16C. EXPEDITED TRACK

The procedure described in this rule may be invoked for cases filed in the Superior Court and cases removed to the Superior Court from the District Court, when the original filing date for the complaint is on or after [date].

(a) Placement Upon Expedited Track. Placement upon the expedited track is limited to cases where the parties affirmatively elect to go forward under this rule and where each party seeking damages agrees that the damages recoverable, including pre-judgment interest, but not including costs, post judgment interest, and any available attorney fees, will be no more than $50,000, or another amount agreed in writing by all parties and filed with the court. After the filing of an answer to a complaint in the Superior Court, the court shall issue a scheduling order in accordance with Rule 16(a) which shall govern the case through trial unless the parties elect to place the case on the expedited track in accordance with this rule, at which point an expedited discovery order shall be substituted by the court and shall govern all subsequent procedures relating to the case through trial.

(b) Election To Proceed On Expedited Track.

(1) *Request by Plaintiff.* A Plaintiff who elects to place a case on the expedited track shall incorporate within the caption of the complaint a notice of its election to place the case on the expedited track. With regard to cases that were initially filed in the District Court and have been removed by a defendant to the Superior Court, a plaintiff, within ten days after removal by the defendant, shall file with the court a pleading indicating its election to place the case on the expedited track.

(2) *Request by Defendant.* Within ten days after the defendant answers, the defendant may file a pleading indicating its agreement to proceed with the case on the expedited track. Otherwise, the case shall proceed in accordance with Rule 16, and the standard scheduling order shall be issued.

(3) *Third Party Complaints and Additional Parties.* Third party complaints are not permitted under this rule.

(c) Expedited Discovery Order. Upon agreement by all parties to place the matter upon the expedited track, the court shall issue an expedited discovery order which shall set forth the deadlines articulated below and may also include other provisions contained within the standard Rule 16(a) scheduling order which are not inconsistent with the special rules relating to expedited discovery described herein.

(d) Discovery

(1) *Plaintiff's Initial Disclosures.* Within twenty-one days after the parties' agreement to proceed by this rule, the plaintiff shall serve upon the defendant its initial disclosures.

(A) The initial disclosures of the plaintiff shall contain the following information:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(iii) A computation of any category of damages claimed by the disclosing party, making available the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including the following information if any claim for loss of income or loss of earning capacity is asserted:

(a) copies of federal income tax returns, with all attachments, for the period beginning three years prior to the occurrence giving rise to the complaint up until the date of the initial disclosures;

(b) A list of employers, with their names and contact information, of the party asserting economic loss for the same period of time described above, together with an appropriate authorization to obtain employment and payroll records;

(c) In lieu of the information required to be provided within sections (a) and (b) above, a party may provide signed authorizations permitting the opposing party or attorney to obtain the information directly from the taxing authorities and/or employers.

(iv) The name and address of any expert witness designated for use at trial together with a report from that expert containing the information required by Rule 16C(d)(1)(C). If the expert witness is a treating medical provider, that physician's medical records may serve as the report required by this subsection. Unless the court orders otherwise for good cause shown, each party may designate no more than one expert per issue.

(B) In a case where damages are claimed for bodily injury and/or emotional distress, a party claiming such damages must provide the following as part of its initial disclosures:

(i) All medical records pertaining to treatment and/or examinations of the party with regard to the injuries claimed from the date of occurrence to the date of the disclosures.

(ii) All medical records reflecting examinations and/or treatment of the party seeking damages for the ten years prior to the occurrence to the date of the disclosures.

(iii) A list of all health care professionals and hospitals where the party seeking damages has been examined or treated for the ten years prior to the occurrence to the date of the disclosures, including the name and address of the medical provider, the period of treatment, and the general nature of the treatment. Upon request, the party seeking damages shall provide authorizations permitting the opposing party or its attorney to obtain the aforesaid information directly from the medical providers.

(iv) A list of all other lawsuits, injury claims, disability claims, or workers compensation claims, for the ten years prior to the occurrence to the date of the disclosures, including the caption of each other matter, the name and address of each forum, the date of each injury or condition, and a brief summary of each injury or condition giving rise to each claim.

(v) In lieu of the information required to be provided within sections (i) and (ii) above, a party may provide the names and addresses for the medical providers and signed authorizations permitting the opposing party or attorney to obtain the information directly from the medical providers.

(C) Reports of Experts. A party shall provide, with respect to any expert witness designated for use at trial, a report, prepared and signed by the expert witness, setting forth a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, and the compensation to be paid to the witness. If the expert witness is a treating medical provider, that physician's medical records may serve as the report required by this subsection.

(2) *Defendant's Initial Disclosures.* A defendant shall be required to provide its initial disclosures, containing the information required by 16(C)(d)(1)(A)(i)-(iii), within thirty days after the date that the defendant serves notice of its election to proceed by the expedited process. A defendant shall be required to provide, for any designated trial expert, the information described within Rule 16C(d)(1)(A)(iv) and Rule 16C(d)(1)(C) within sixty days after the date that the defendant serves notice of its election to proceed by the expedited

track. A defendant pursuing a counterclaim shall provide the same disclosures as a plaintiff, as described in Rule 16C(d)(1).

(3) *Duty to Supplement.* The parties are obligated to supplement information contained within their initial disclosures, including information relating to expert witnesses, on a timely basis as that information becomes available to them, without any obligation on the part of the other party to request such supplementation, up until the time of trial.

(4) *Written Discovery.* Unless otherwise ordered by the court, upon a request by a party and for good cause shown, the parties shall not be allowed to serve more than ten interrogatories, more than ten requests for production of documents and more than ten requests for admissions. The parties may furnish signed authorizations in lieu of producing documents requested by the other party within the time for responding to the requests.

(5) *Depositions.* Depositions are limited to three per party.

(6) *Time for Completing Discovery.* Discovery shall be completed within six months after an expedited scheduling order has been entered. Discovery shall be initiated so as to enable the opposing party to serve a response within the period allowed by the rules but in advance of the deadline.

(7) *Discovery Disputes.* Any disputes concerning the substance or timing of the initial disclosures and discovery shall be addressed in accordance with Rule 26(g). The court shall give priority to resolving said disputes promptly, given the shorter deadlines involved.

(e) Trial Procedure

(1) *Reports of Experts.* Any party may introduce the direct testimony of an expert witness, including treating physicians, through that expert's written report, which must include the information required by Rule 16C(d)(1)(C). If the party plans to introduce an expert report at trial in lieu of live testimony, the party must provide notice to all other parties of its intent to do so at least thirty days before the close of discovery. Any objections or motions must be filed with the court by the discovery deadline so the court can make appropriate rulings and allow the proffering party an opportunity to amend the report to meet any sustained objections by the opposing party and to allow time to conduct a deposition of the expert. If the parties depose an expert, each may designate all or portions of that

deposition testimony, to be admitted into evidence at trial, regardless of the expert's availability for trial.

(2) *Medical Records.* The parties may utilize copies of medical records which would qualify for admission by statute or as business records in accordance with Maine Rules of Evidence 803(6) and 902(11) and (12) if accompanied by the appropriate certification.

(f) Judgment. No judgment shall issue in excess of $50,000 or other amount agreed to by the parties pursuant to section (a) of this Rule 16C. If a jury returns a verdict that exceeds $50,000, or other amount agreed to by the parties pursuant to section (a) of this Rule 16C, the court shall reduce the verdict to $50,000 or to the said agreed amount, including prejudgment interest, but exclusive of costs, post-judgment interest, and any applicable attorney fees, and judgment shall be entered accordingly.

(g) Alternative Dispute Resolution. The requirements of Rule 16B do not apply to cases placed upon the expedited track. However, the parties, by agreement, may elect to conduct ADR prior to trial.

(h) Other Provisions of Maine Rules of Civil Procedure Unaffected. Unless inconsistent with a provision of this rule, the Maine Rules of Civil Procedure apply to cases placed on the expedited trial list.

Advisory Note – June 2014

This new Rule 16C provides an expedited track for specified cases.

2. Rule 26 of the Maine Rules of Civil Procedure is amended to read as follows:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

. . . .

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained ~~only~~ as follows:

(A)(i) If the information is not already ordered to be produced by Court scheduling or other orders, a ~~A~~ party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to identify the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, and the compensation to be paid for the study and testimony, provided however, that, unless otherwise ordered by the court, information relating to qualifications, publications and compensation need not be provided for experts who have been treating physicians of a party for any injury that is a subject of the litigation; (ii) A party may take the testimony of each person whom another party has designated as an expert witness for trial by deposition pursuant to Rule 30 or Rule 31.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Communications between the party's attorney and any testifying expert witness, regardless of the form of the communications and including drafts of Rule 26(b)(4) disclosures ordered by the court and reports to the attorney, are protected from discovery except to the extent that the communications (i) relate to or contain information about compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Communications between the party's attorney and any testifying expert witness not meeting one or more of the above three criteria may be obtained in discovery only (i) as provided in Rule 35(b) or (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(D) Unless manifest injustice would result, the court shall require that the party seeking discovery of the expert pay the expert a reasonable fee for time spent at the deposition. Upon a showing of good cause, the court may award additional reasonable fees and expenses of the expert for expert discovery pursuant to this rule.

Advisory Note – June 2014

Subdivision (b)(4)(A)(i) is amended to make it clear that the use of interrogatories in expert discovery is an option if the court has not issued a scheduling order requiring expert disclosures and Rule 26(b)(4) information. Interrogatories are not mandatory under the Rule, nor are they the sole means for obtaining discovery of an expert.

The addition of the new subdivision (b)(4)(C) regarding communications between a party's attorney and testifying expert witnesses was prompted by similar changes to the Federal Rule, protecting draft expert disclosures and reports and certain other communications as work product. Under the State Rule and practice, there was no similar protection. The Committee debated the merits of allowing freer communications between lawyers and their experts without fear of discovery and the countervailing concerns that protecting those communications limits the ability of opposing counsel to conduct meaningful cross-examination. The amended protective Rule and its exceptions attempt to strike a reasonable balance, obviating the cumbersome and artificial practice of communicating with experts only orally while ensuring that communications important for cross-examining experts remain discoverable. Because the amendment protects only communications between the lawyer and her expert, anything else that is otherwise discoverable remains discoverable. The facts observed, the information learned, and the opinions reached by the expert are not protected from discovery simply because they are shared with the attorney. Changes in the expert's opinions are discoverable regardless of the fact that those changes were conveyed to the attorney, but the communications between the expert and the attorney about those changes are protected unless they meet one of the three exceptions.

Former subdivision (b)(4)(C) is now subdivision (b)(4)(D).

3. Rule 50 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 50. JUDGMENT AS A MATTER OF LAW

. . . .

(b) Renewal of Motion for Judgment as a Matter of Law After Trial. Whenever a motion for judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed in open court or by service and filing not later than ~~10~~ 14 days after entry of judgment. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned the court may direct the entry of judgment as a matter of law or may order a new trial.

. . . .

(d) Motion for Judgment as a Matter of Law in Nonjury Case. In an action tried by the court without a jury, a motion may be made at any time for judgment as a matter of law on any claim. The motion shall specify the claim or claims as to which judgment is sought and the issue or issues as to which it is contended that the law and the facts entitle the moving party to judgment. Before considering the motion, the court shall ascertain that the party opposing the motion has been fully heard with respect to the issue or issues raised. If the court finds against the party opposing the motion on any issue that under the substantive law is an essential element of any claim, the court may enter judgment as a matter of law against that party on that claim. Alternatively, the court may decline to render any judgment until the close of all the evidence. ~~If the court renders judgment on the merits, the court shall upon request make findings as provided in Rule 52(a).~~

Advisory Note – June 2014

See Advisory Note – June 2014 to M.R. Civ. P. 52. The change to Rule 50(d) is made simply to eliminate the redundancy with Rule 52.

4. Rule 52 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 52. FINDINGS BY THE COURT

(a) ~~Effect~~ Findings. In all actions tried upon the facts without a jury or with an advisory jury, the Superior Court justice or, if an electronic recording was made in the District Court, the District Court judge, shall, upon the request of a party made as a motion within ~~5~~ 7 days after ~~notice of the decision~~ the statement of the decision in open court or the entry of the decision, whichever comes first, or may upon its own motion, find the facts specially and state separately its conclusions of law. ~~thereon and direct the entry of the appropriate judgment if it differs from any judgment that may have been entered before such request was made;~~ Such findings and conclusions may be made in summary form and may be made orally, provided that, in every action for termination of parental rights, the court shall make specific findings of fact and state its conclusions of law thereon as required by 22 M.R.S. § 4055. ~~whether or not requested by a party. In granting or refusing interlocutory injunctions the court shall similarly on such request set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court.~~ If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 ~~or any other motion except as provided in Rule 50(d)~~.

(b) ~~Amendment~~ Amended or Additional Findings. The court may, upon motion of a party ~~made~~ filed not later than ~~10~~ 14 days after ~~notice of findings made by the court~~ entry of judgment, amend its findings or make additional findings and~~,~~ ~~if judgment has been entered,~~ may amend the judgment if appropriate ~~accordingly~~. The motion may be made with a motion for a new trial or a motion to alter or amend the judgment pursuant to Rule 59. ~~When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.~~

(c) Effect. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court.

Advisory Note – June 2014

Rule 52 has been amended to eliminate confusion under the prior version of the Rule, which gave parties a 5-day deadline from notice of decision to request findings of fact and a 10-day deadline after notice of findings to move for additional or amended findings.

Amended Rule 52(a) now provides that the deadline for a motion for findings of fact and conclusions of law is set at 7 days after the statement of the decision in open court or the entry of the decision, whichever comes first.

If any party seeks detailed findings of facts or seeks to have the court amend its existing findings, that party shall file a motion for additional or amended findings under Rule 52(b). The deadline for filing that motion has now been set at 14 days after entry of judgment. This is the same deadline set for renewed motions for judgment as a matter of law under Rule 50(b), for motions for a new trial under Rule 59(b), and for motions to alter or amend a judgment under Rule 59(e).

Rule 52(c) is adopted to separate out the standard for appellate review of findings of fact.

5. Rule 59 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 59. NEW TRIALS: AMENDMENT OF JUDGMENTS

. . . .

(b) Time for Motion. A motion for a new trial shall be ~~served~~ filed not later than ~~10~~ 14 days after the entry of the judgment.

. . . .

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be ~~served~~ filed not later than ~~10~~ 14 days after entry of the judgment. A motion for reconsideration of the judgment shall be treated as a motion to alter or amend the judgment.

Advisory Note – June 2014

See Advisory Note – June 2014 to M.R. Civ. P. 52.

6. Rule 80B of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 80B. REVIEW OF GOVERNMENTAL ACTION

. . . .

(b) Time Limits; Stay. The time within which review may be sought shall be as provided by statute, except that if no time limit is specified by statute, the complaint shall be filed within 30 days after notice of any action or refusal to act of which review is sought unless the court enlarges the time in accordance with Rule 6(b), and, in the event of a failure to act, within six months after expiration of the time in which action should reasonably have occurred. Except as otherwise provided by statute, the filing of the complaint does not stay any action of which review is sought, but the court may order a stay upon such terms as it deems proper. The time for the filing of an appeal shall commence upon the date of the public vote or announcement of final decision of the governmental decision-maker of which review is sought, except that, if such governmental action is required by statute, ordinance, or rule to be made or evidenced by a written decision, then the time for the filing of an appeal shall commence when the written decision has been adopted. If such written decision is required by statute, ordinance, or rule to be delivered to any person or persons, then the time for the filing of an appeal shall commence when the written decision is delivered to such person or persons. If such written decision is sent by mail, delivery shall be deemed to have occurred upon the earlier of (i) the date of actual receipt or (ii) three days after the date of mailing.

. . . .

(m) Remand by the Superior Court. If the Superior Court remands the case for further action or proceedings by the governmental agency, the Superior Court's decision is not a final judgment, and all issues raised on the Superior Court's review of the governmental action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such governmental action. The Superior Court does not, however, retain jurisdiction of the case.

~~(m)~~(n) **Review by the Law Court**. Unless by statute or otherwise the decision of the Superior Court is final, review by the Law Court shall be by appeal or report in accordance with the Maine Rules of Appellate Procedure, and no other method of appellate review shall be permitted. ~~If the Superior Court remands the case for further proceedings, all issues raised on the Superior Court's review of the governmental action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such governmental action.~~

Advisory Note – June 2014

The amendment to subsection (b) is an attempt to provide a three-tier construct that directs the appellant to use the date of the original vote or decision unless a written decision is required by law or ordinance. This amendment was drafted after consultation with a subcommittee of land use and municipal attorneys in response to the Law Court decision of *Gorham v. Androscoggin County*, 2011 ME 63, 21 A.3d 115.

The additional amendments separate the Superior Court and Law Court levels of review by replacing subdivision (m) and creating a new subsection (n). The amendments attempt to clarify the role of the Superior Court when there is a remand order to a municipal or other governmental decision-maker. The sentence stating that an order of remand for further action or proceedings is not a final judgment is added to codify the holding that has been repeated in several recent Law Court decisions. *See, e.g.*, *Town of Minot v. Starbird*, 2012 ME 25, 39 A.3d 897; *Aubry v. Town of Mount Desert*, 2010 ME 111, 10 A.3d 662; *Brickley v. Horton*, 2008 ME 111, 951 A.2d 801.

7. Rule 81(b) of the Maine Rules of Civil Procedure is amended to read as follows:

(b) Limited Applicability.

. . . .

(2) *District Court.* These rules do not apply to the beginning and conducting of the following actions and proceedings in the District Court:

. . . .

(D) Proceedings for commitment or recommitment of persons mentally ill or proceedings for admission to a progressive treatment program for persons with mental illness.

Advisory Note – June 2014

Subdivision (b)(2)(D) is amended to include, among the District Court proceedings to which these Rules do not apply, proceedings for admission to a progressive treatment program for persons with mental illness. *See* 34-B M.R.S. § 3873-A.

8. Amendment 1, which creates new Rule 16C, shall be effective for complaints filed on or after January 1, 2015. All other amendments shall be effective September 1, 2014.

Dated: June 19, 2014

FOR THE COURT[1]

LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

[1] This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.