

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

**2016 Me. Rules 05**

Effective: July 29, 2016

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are adopted to be effective on the date 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. Rule 91(f)(2)(A) of the Maine Rules of Civil Procedure is amended to read as follows:

**(2) *Transcript or electronic recording.***

.....

(A) In a child protection proceeding, involuntary commitment proceeding, proceeding for the appointment of a guardian or termination of a guardianship for a minor, adoption, or proceeding to terminate parental rights as part of an adoption proceeding, the court shall order that a paper transcript be prepared at state expense;

**Advisory Note – July 2016**

The language added reflects the expanded jurisdiction granted to the District Courts pursuant to Public Law 2015, chapter 460, “An Act To Ensure a Continuing Home Court for Cases Involving Children,” enacted by the 127th Maine Legislature, which became effective on July 29, 2016. Pursuant to that legislative act, the District Court now has jurisdiction over adoption, guardianship, and name change petitions involving minor children when there is a pending proceeding involving the child in the District Court (such as a divorce, child protection, or paternity matter). This change adds adoptions and terminations of guardianships

of minors to the list of case types in which courts are required to provide paper transcripts at State expense to indigent litigants.

2. Rule 92(b)(2) and (5)(e) of the Maine Rules of Civil Procedure is amended to read as follows:

**(b) Mediation of Family Matters.**

.....

(2) *Mediation Optional.* Actions for visitation rights of grandparents, emancipation of minors, paternity or parentage, guardianships of minor children, termination of guardianships of minor children, adoptions of minor children, name changes of minor children, and motions to modify a preliminary injunction, motions to enforce a judgment, and motions for contempt may be referred to mediation.

.....

(5) *CADRES Referral.* In all contested family matters referred to mediation through CADRES, the following shall apply:

(E) Attendance at Mediation. Each party and ~~their~~ the party's attorney, if any, shall be present at mediation and shall make a good faith effort to mediate all disputed issues. In exceptional circumstances, a party may participate by telephone with the prior approval of the court. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions;

**Advisory Note – July 2016**

For the language added to Rule 92(b)(2), see the July 2016 Advisory Note for Rule 91. The change made to Rule 92(b)(5)(E) corrects a grammatical error.

3. Chapter XIII is amended to read as follows [existing advisory notes omitted]:

### **XIII. FAMILY DIVISION**

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

The rules in this chapter shall govern procedure in the District Court and, where applicable, procedure on post-judgment motions in the Superior Court, in all actions for divorce, annulment, judicial separation, paternity or parentage, parental rights and responsibilities, child support, guardianship, adoption, name change, emancipation, visitation rights of grandparents, and any post-judgment motions arising from these actions. In addition, Rule 126 establishes the procedure to be used in child protection cases when there is a Probate Court case involving the same child or children that must be transferred to the District Court. The District Court shall have exclusive jurisdiction over such actions, except that (1) any issue on which there is a constitutional right to a trial by jury may be heard and decided by a jury in the Superior Court upon a proper and timely request for transfer in accordance with Rule 76, and (2) the Superior Court may continue to hear post-judgment motions in actions that were pending or concluded in the Superior Court on or before December 31, 2000 and have not been transferred to the District Court. Reference to the court within this chapter includes District Court Judges, Superior Court Justices, and Family Law Magistrates, unless otherwise specified.

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

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

#### **Advisory Note – July 2016**

The language added reflects the expanded jurisdiction granted to the District Courts pursuant to Public Law 2015, chapter 460, “An Act To Ensure a Continuing Home Court for Cases Involving Children,” enacted by the 127th Maine Legislature, which became effective on July 29, 2016. Pursuant to that legislative act, the District Court now has jurisdiction over adoption, guardianship, and name change petitions involving minor children when there is a pending proceeding involving the child in the District Court (such as a divorce, child protection, or paternity matter). In those circumstances, the District Court becomes the child’s “home court” and has exclusive jurisdiction over all of the pending matters involving the child. *See* 4 M.R.S. § 152(5-A).

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

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

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

**(a) Filing.** Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

**(b) Complaint, Petition or Motion Form.** In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence. A party seeking to be adjudicated a de facto parent of a child must file with his or her initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship as required in 19-A M.R.S. § 1891. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.

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

### **Advisory Note – July 2016**

The last two sentences in Rule 101(b) were added to reflect the requirements contained in the Maine Parentage Act with regard to de facto parentage. 19-A M.R.S. § 1891.

### **RULE 102. CONFIDENTIALITY**

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or minor child would be jeopardized by disclosure of identifying information appearing in any document filed with the court, the clerk shall seal the identifying information and shall not disclose the information to any other party or to the general public. Disclosure may be ordered only after a hearing in which the court takes into consideration the health, safety, and liberty of the party or minor child and determines that the disclosure is in the interest of justice. The court is authorized to enter any orders in furtherance of the purposes of this section. A party filing an action for parentage by assisted reproduction or gestational carrier agreement may request an order sealing the records from the public to protect the privacy of the child and the parties. Adoption records are confidential pursuant to 18-A M.R.S. § 9-310.

### **Advisory Note – July 2016**

The first sentence of additional language reflects a provision in the Maine Parentage Act that allows parties who wish to obtain a “birth order” to establish parentage and parental rights and responsibilities for a child conceived through assisted reproduction to ask the court to seal the record of the proceeding. *See* 19-A M.R.S. § 1928(1)(B). The second sentence simply reminds the court and the parties of the statutory imposition of confidentiality on adoption records.

### **RULE 103. PROCESS**

All actions commenced by filing a complaint, petition or a motion for post-judgment relief with accompanying documents as required by this chapter shall be personally served upon the other party or parties in accordance with Rule 4, except as may be provided in these rules or by statute. In all actions under this chapter, including motions for post-judgment relief, service may be made by registered or certified mail, with restricted delivery and return receipt requested as permitted

under Rule 4(f)(2). This form of service may be made in or outside of the state, provided that the party being served is subject to the court's jurisdiction.

## **RULE 104. PRELIMINARY INJUNCTION**

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

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

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

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

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

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

## Advisory Note – July 2016

The omission of list numbers in the first sentence of Rule 104(a) reflects an attempt to improve readability.

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

**(a) Answer and Appearance.** Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within ~~20~~ 21 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within ~~20~~ 21 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). A party who intends to respond to a de facto parentage complaint must file an affidavit addressing the factors of 19-A M.R.S. § 1891(3)(A)-(E), and shall serve it on all parties to the proceeding. When the court schedules a hearing on any matter before the ~~20~~ 21 day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

If parental rights and responsibilities of concerning a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an emancipation action, an action to establish the guardianship of a minor child, or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.

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

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

Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

### **Advisory Note – July 2016**

The changes made to Rule 105(a) accomplish four goals. They include the Maine Parentage Act's requirements for pleadings in de facto parentage litigation, *see* 19-A M.R.S. § 1891, clarify a phrase, specifically indicate that parties notified of a petition for guardianship of a minor child are not required to file an answer, and reflect the Judicial Branch's preference for using multiples of 7 for filing or response dates to allow for easier calculations of those dates.

### **RULE 106. DEFENSES**

**(a) Defenses to be Asserted.** Every defense, in law or fact, shall be asserted in the responsive pleading except that the following defenses may be asserted by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of ~~P~~process; and (5) insufficiency of ~~S~~service of ~~P~~process.

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

### **Advisory Note – July 2016**

Changes were made to 106(a) to correct typographical errors.

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

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

(1) parental rights and responsibilities for any minor children, including health insurance and child support;

(2) appointment and payment of a guardian ad litem;



(3) participation in a parental education program (at the request of either party, or on the court's own motion);

(4) genetic or other testing;

(5) psychological or other evaluations;

(6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;

(7) possession of owned or rented real and personal property pending the final judgment;

(8) payment of debts and obligations;

(9) sale of any property of the parties, along with the disposition of the proceeds;

(10) interim spousal support;

(11) a job search;

(12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;

(13) prohibition of either party from imposing any restraint on the personal liberty of the other;

(14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and

(15) dissolution or modification of a preliminary injunction or an attachment or trustee process.

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

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

**(b) Hearings on Motions for Interim Orders/Orders before Judgment.** All motions for interim orders or orders before judgment must include a list of witnesses, an estimate of time needed for the presentation of evidence, and a draft order specifying the relief being requested. After review of the motion and any opposition filed, the court may:

(1) Schedule a hearing of no longer than three hours; or

(2) Require the parties to engage in mediation before setting a hearing in those cases where mediation can be mandated, unless the requested interim hearing is for child support only.

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

(1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;

(2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest or financial support of a child or the parental rights of a party;

(3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;

(4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;

(5) any unreasonable delay on the part of the moving party in filing the motion;

(6) any conduct on the part of either party impairing a fair and just resolution of the issues.

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

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

All expedited hearings shall be limited to no more than three hours.

#### **Advisory Note – July 2016**

Changing “prior to” to “before” throughout these rules reflects the Judicial Branch’s preference for avoiding “legalese” in its rules and forms. The change from “may” to “shall” in Rule 107(a) is intended to assist the parties and the court in understanding precisely what relief is being requested. The additional language in Rule 107(a)(3) clarifies that the court may refer the parties to parent education classes on its own initiative. The language added in Rule 107(a)(4) clarifies that a court may order genetic testing, *e.g.*, to determine parentage.

The new limitation on the time allowed for interim hearings, provided for in new Rule 107(b), reflects a suggestion contained in the June 2014 Family Division Task Force Report (“FDTF 2014 report”). Rule 107(b) imposes requirements on parties requesting interim or expedited hearings to provide witness lists, hearing time estimates, and proposed orders. It also limits the duration of any interim hearing to three hours and allows a magistrate to hear an interim proceeding without requiring the parties to first mediate their dispute, even in those cases where mediation is required. *See* Rule 92(b)(2). These changes, which should allow the parties and the court to better manage these proceedings and focus on

which issues need immediate resolution, were recommended in the FDTF 2014 report.

Former Rule 107(b) is renumbered as Rule 107(c), and a reference to a court-approved Request for Expedited Hearing form is added. Adding the financial support of a child as a factor to be considered in Rule 107(c)(2) reflects a determination that providing for a child's best interest may require one parent to support another.

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

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

(1) In any proceeding under this chapter in which child support is an issue, the parties shall exchange and file child support affidavits. Except for actions initiated by the Department of Health and Human Services, the party initiating the action shall serve and file a completed child support affidavit with the complaint, petition or motion. The responding party shall file a completed child support affidavit with the response or appearance. If no responsive pleading is required, the responding party shall file a completed child support affidavit no later than 21 days after the responding party is served with the complaint, petition, or motion but no later than the case management conference.

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

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

**(c) Financial Statements.** In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, each of the parties shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and nonmarital property. Each party shall file his or her ~~The financial statement shall be filed~~ within 21 days ~~after~~ of the

issuance of the Family Division Scheduling Order or three business days before mediation, whichever is earlier.

**(d) Miscellaneous requirements.**

(1) *Forms for Filings.* Each party must file his or her financial ~~Financial~~ statements, child support affidavits and child support worksheets ~~shall be filed~~ on court-approved forms that are published by the court.

(2) *Signature Under Oath.* Each party must sign his or her ~~All~~ child support affidavits and financial statements ~~shall be signed by the party~~ under oath.

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

(4) *Updated Statements.* The parties shall update child support affidavits and financial statements 7 days before trial and file the updated statements with the court.

**(e) Real Estate Certificates.** In every divorce action in which any party has an interest in real estate, the parties shall file with the court, at least ~~3~~ 7 days before the hearing, the following information on the court approved form: the book and page numbers of an instrument describing the real estate; the applicable Registry of Deeds; and the town, county and state where the real estate is located.

**(f) Sanctions.**

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

(2) ~~A Notwithstanding a party's failure to file a child support affidavit, the court shall enter a child support order within 63 days of after the case management conference unless the parties demonstrate that the child(ren)'s needs are being met. shall be entered notwithstanding a party's failure to file a child support affidavit.~~ If a party fails to file a child support affidavit without good cause, the court may take any of the following actions:

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

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

(~~2~~ii) Maine Department of Labor statistics;

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

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

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

(C) Award attorney fees.

### **Advisory Note – July 2016**

Some changes were made to correct typographical or grammatical errors, others in an attempt to improve the readability of the rule. The new language in the last sentence of Rule 108(a)(1) clarifies each party's obligation to timely file a child support affidavit. The change to Rule 108(f)(2) imposes an obligation on the court to issue a child support order within 63 days after the case management conference, unless the court is satisfied that the child(ren)'s needs are being met. This change reflects a suggestion contained in the FDTF 2014 report to "enforce" Rule 108. Numbering conventions were changed to be consistent with the Rules as a whole.

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

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

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

### **Advisory Note – July 2016**

The placement of the words “without good cause” was altered in an attempt to improve the readability of the rule.

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

**(a) Family Law Magistrates.** In all Family Division actions involving minor children, and subject to the Family Division Rules, including all actions that have been transferred to the District Court from the Probate Court, Family Law Magistrates shall have authority to: (1) hold case management conferences and other prehearing or pretrial conferences including judicial settlement conferences; (2) determine whether a party or counsel may attend a conference, mediation or hearing by telephone; (3) issue interim orders ~~prior to~~ before judgment under Rule 107(a) and act on motions for expedited hearings under Rule 107~~(b)~~(c); (4) issue final orders establishing or modifying child support; (5) order genetic testing; and (6) issue orders in child support enforcement actions. In ~~an~~ uncontested proceedings, magistrates may issue divorce judgments, paternity judgments, parentage judgments, judicial separation decrees, final orders establishing parental rights and responsibilities, guardianship orders, name-change orders, and orders on post-judgment motions modifying any such original orders.

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

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

**(b) Case Management.**

(1) *Case Management Conferences.* Whenever a complaint, petition or motion is filed in any proceeding involving minor children over which a magistrate has authority, except an emancipation action, the parties, and if represented their counsel, shall attend a case management conference with a magistrate or judge. At the initial conference and any subsequent conference the parties shall be prepared to address any issues in the case that may be raised by the court or the parties including, but not limited to: identification of any cases pending in other District Court locations or in a Probate Court; determination of whether there are any individuals who should be joined in, or served notice of, any action for parentage; any issues in dispute; the need for an interim order or orders under Rule 107(a); a prehearing conference; an uncontested hearing date; and any other matters pertinent to the case. Following the conference, the magistrate shall enter a case management order and other orders as appropriate.

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

(2) *Notice of Conference.* Except for motions to modify support filed pursuant to 19-A M.R.S. § 2009, the parties will be notified of the date and time of the case management conference within ~~two weeks~~ 14 days after the filing in court of the proof of service of the complaint, petition or motion. The conference will be held after the time for filing a response has passed. When a motion to modify support is filed pursuant to section 2009, the clerk will schedule a conference after receiving a response to the motion. If there is no response, a conference will not be scheduled, and the court will proceed in accordance with the provisions of section 2009.

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

(A) Rescheduling

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



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

(ii) Deferral of Conference. Parties may request by letter, accompanied by the appropriate mediation fee, that the case management conference be deferred for up to ~~90~~ 91 days and that they proceed directly to mediation pursuant to Rule 92(b). The letter must state that the parties or their counsel have conferred and that they agree that the children's needs are being met, there are no discovery disputes, there are no issues of domestic violence, financial statements will be filed with the court before mediation, and both parties join in the request. ~~Both parties~~ Each party, or ~~an~~ each party's attorney of record, must sign the letter. The appropriate mediation fee must be paid to the court when mediation is requested. The conference shall be scheduled by the clerk for no later than ~~90~~ 91 days after the deferral.

(B) Waiver of Conference. Instead of attending an initial case management conference following the filing of a complaint or petition, the parties may file a certificate stating that they have reached a temporary agreement on all issues relating to the children. The certificate must be signed by ~~both~~ all parties or their attorneys, indicate what issues, if any, remain unresolved in the case, and include a date for a status conference, mediation when mediation is required, including a date for payment of mediation fee, or a final hearing not to exceed no later than 90 91 days after from the date of the certificate. The parties are responsible for obtaining dates from the court. With the certificate, the parties must submit for the magistrate's review child support affidavits, worksheets, a written agreement on parental rights and responsibilities that addresses the children's residence, support or maintenance, and parent-child contact, and, if an interim order is requested, a proposed order incorporating the terms of the agreement. The magistrate may require the parties to attend a case management conference if the agreement appears inequitable on its face, if the agreement provides for a deviation from the child support guidelines, if there has been a history of domestic abuse, or for any other reason. Upon receipt of a written statement by either party that the agreement is not being followed, the court will schedule a case management conference ~~will be scheduled~~.

#### (4) *Interim Relief.*

(A) Interim Orders Without Hearing. At any stage in the proceedings, a magistrate may enter interim orders with the consent of the parties or when a party

is in default. Whether or not the parties agree, a magistrate may enter a Family Division Scheduling Order. At their initial court appearance, the parties shall be advised of their right to have a judge determine interim parental rights and responsibilities. To exercise this right, a party must file a written request with the court clerk either before or at the time of their initial court appearance. In the absence of such a written request, the parties' consent will be presumed, and a magistrate may determine interim parental rights and responsibilities.

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

(C) Interim Orders After Hearing. ~~If, after~~ In cases where mediation is required and has occurred, but the parties have not reached an interim agreement, and in cases where mediation is not required or ordered, the magistrate may conduct a hearing on the contested issues and enter an interim order. In no case shall the hearing be longer than three hours. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

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

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

(B) Contested Proceedings Where Mediation Is Required. When issues remain in dispute and mediation is required but has not been held on these issues, the case shall be referred to mediation as provided in Rule 92(b).

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

(ii) When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing unless the parties otherwise agree pursuant to Rule 114(b)(3).

(C) Contested Proceedings Where Mediation Is Not Required. When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing unless the parties otherwise agree pursuant to Rule 114(b)(3).

*(6) Post-Judgment Motions.*

(A) Motions to Modify.

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

(ii) Uncontested Motions. Instead of attending a case management conference on a post-judgment motion, the parties may file a certificate stating that a hearing is not necessary because the motion is unopposed or the parties have reached an agreement. The certificate must be signed by both parties under oath, and be accompanied by a stipulated order. When the proceeding is a motion to modify child support and the responding party does not request a hearing, the conference may be waived and the magistrate may enter an order pursuant to 19-A M.R.S. § 2009(6).

(B) Motions to Enforce. A motion to enforce a judgment or order shall be addressed in a timely fashion and shall be heard by a magistrate as part of a post-judgment docket. If the motion is not resolved at the post-judgment docket, the motion shall be referred to a judge who may refer the motion to mediation, or may refer the action for prompt scheduling of a hearing before a judicial officer. If the matter cannot be scheduled promptly on a post-judgment docket, the motion shall not be included in the case management process and shall be referred to a judge. Relief on a motion to enforce may include amendment of a judgment or order if such is necessary to achieve the purposes of the judgment or order.

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

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

### **Advisory Note – July 2016**

For the changes made to Rule 110A(a) and (b)(1), see the July 2016 Advisory Note to Rule 100. For the change made to Rule 110A(b)(4)(C), see the July 2016 Advisory Note to Rule 107. Although mediation is required for many family matters, it is not required for adoptions, name changes, or guardianships for minor children. *See* M.R. Civ. P. 92(b)(2). As a result, it was necessary to make changes to Rules 110A(b)(3)(B), 110A(b)(4)(C), and 110A(b)(5)(B), and to add Rule 110A(b)(5)(C). The changes to Rule 110A(b)(6)(B) refer to the statewide use of post-judgment “triage” lists and the post-triage referral to a judge of any cases not resolved, and reflect a recommendation made by the FDTF 2014 report. Additional changes throughout the rule correct typographical or grammatical errors, attempt to improve the readability of the rule, reflect the reality that some family matters have more than two parties, and reflect the Judicial Branch’s attempt to change all dates for deadlines to multiples of 7.

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

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

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

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

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

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

#### **Advisory Note – July 2016**

The change to Rule 110B(a) corrects a grammatical error.

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

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

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

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

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

**(c) Intervention.** A person may petition to intervene in a Family Division action only when that intervention is specifically authorized by statute, or when the individual or entity would be authorized to file a complaint or post-judgment

motion involving one or more of the same parties and issues that are being addressed in the Family Division action in which the person is seeking to intervene. A person asserting a claim for parentage or de facto parentage may not intervene in a pending divorce or parental rights and responsibilities case, but must file and serve a separate petition for parentage and parental rights and responsibilities. Where intervention is authorized, practice regarding intervention is governed by Rule 24.

### **Advisory Note – July 2016**

The additional language in Rule 111(c) reflects the Maine Parentage Act's requirements for de facto parentage cases. *See* 19-A M.R.S. § 1891.

## **RULE 112. DISCOVERY**

### **(a) Discovery Limitations.**

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

(2) On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

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

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

## **Advisory Note – July 2016**

The change in Rule 112(a) was made to improve the readability of the rule by adding paragraph numbers. The change in Rule 112(b) was made to clarify that the rule applies to all Family Division matters.

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

An action for divorce or annulment shall not be in order for final hearing until 60 days or more after service of the summons and complaint; nor shall it be in order for hearing until there is on file with the court a statement signed by the plaintiff, which may be contained in the complaint, stating whether any divorce or annulment actions have previously been commenced between the parties, and if so the designation of the court or courts involved and the disposition made of any such actions. Except as the court may otherwise direct, no case involving real estate shall be ready for final hearing until the real estate certificates have been completed as required by Rule 108.

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

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

### **RULE 114. TRIAL**

**(a) Trial Process.** A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the child support guidelines. The Maine Rules of Evidence shall govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing

conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

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

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

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

(3) *Final Contested Matters.* When all parties consent, a magistrate is authorized to hear and to dispose of all elements of a Family Division matter, except adoptions, provided that the Magistrate determines that it is reasonably likely that the hearing can be completed within 3 hours.

**Advisory Note – July 2016**

The amendment adds Rule 114(b)(3), which reflects a suggestion contained in the FDTF 2014 report. See also the July 2016 Advisory Note to Rule 107.

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

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

**(b) Finality.** Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, judicial separation, disposition of property, or other disposition, award, or division of property incident to a divorce, annulment, judicial separation or any order relating to paternity, parentage, parental rights and responsibilities including child support, emancipation, and visitation rights of grandparents, other than a temporary or



interim order under these rules, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

### **Advisory Note – July 2016**

The addition of the word “final” in Rule 115(a) is intended to clarify that the rule applies to final judgments in family matter cases. Note that Rule 117(b) allows the court to enter an order by default without a hearing when only a modification in child support pursuant to 19-A M.R.S. § 2009(6) is requested.

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

Rule 41 shall govern practice under this chapter regarding dismissal of actions, except that all dismissals shall be without prejudice unless the court specifically indicates that a dismissal is with prejudice and precludes further litigation of the same issue. Any new action addressing issues similar to a dismissed action shall be subject to appropriate counterclaims and defenses.

### **RULE 117. DEFAULT**

**(a) Matters other than those requesting only child support modifications.** Except for motions filed requesting only a modification in child support pursuant to 19-A M.R.S. § 2009(6), Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard before entry of judgment. ~~Notice of hearing is not required prior to entry of a default judgment where the court finds that the party, although properly served with the complaint, petition or motion for post-judgment relief, has not entered an appearance and/or otherwise participated in proceedings before the judgment.~~

**(b) Child support modification.** When a party has filed a motion seeking only the modification of child support and has attached a proposed order, if the other party does not request a hearing within 30 days after service of the motion, the court may, without holding a hearing, enter an order granting the relief requested using the proposed order, so long as the resulting support obligation is

equal to or greater than the obligation resulting from the application of 19-A M.R.S. § 2005.

### **Advisory Note – July 2016**

The first change made to Rule 117(a) and the addition of Rule 117(b) reflect the statutory provision for modifying child support orders without a hearing when no request for hearing has been made. The second change to Rule 117(a), which omits the final sentence, ends the practice of holding “hearings” without providing notice to a party.

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

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

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

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

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

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

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

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

#### **Advisory Note – July 2016**

The change to Rule 118(a) was made to improve the readability of the rule.

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

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

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

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

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

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

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

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

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

#### **Advisory Note – July 2016**

The change of numbering in Rule 120(b) was made to improve the readability of the rule.

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

Unless otherwise ordered by the court, an interlocutory or final judgment in an order addressing parental rights and responsibilities, residency and support of minor children or the separate support or personal liberty of a person shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

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

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

Any Family Division action pending in the Superior Court may be transferred to the District Court. Transfer shall be accomplished by filing a notice of transfer agreed to by the parties or their counsel and by paying to the clerk of the Superior Court any required fees. No transfer may be requested during a hearing or while the court has under advisement the merits of the action or any motion after

hearing. The action may be transferred to a division of the District Court, located within the county in which either party resided at the commencement of the action. The notice must designate the receiving District Court. After a judgment has become final, the action may be transferred to any division of the District Court. The clerk shall file a copy of the record and all original papers in the action in the District Court in that division. Thereafter the action shall be prosecuted as if all prior proceedings in the action had taken place in the District Court.

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

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

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

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

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

### **RULE 125. EFFECTIVE DATE**

The new rules in Chapter XIII, Rules 126 and 127, and related amendments throughout Chapter XIII are effective July 29, 2016 ~~January 1, 2009~~. They shall govern all proceedings in Family Division actions brought on and after July 29, 2016, ~~January 1, 2009~~ and all further proceedings in actions then pending.

### **Advisory Note – July 2016**

The changes were made to explain when the new rules and related amendments become effective and omit now unnecessary language regarding the original effective date of Chapter XIII.

~~[Rules 126 to 129 Reserved.]~~

**RULE 126. TRANSFERS FROM PROBATE COURT WHEN A FAMILY  
MATTER OR A CHILD PROTECTION MATTER IS PENDING IN THE  
DISTRICT COURT**

**(a) Transfer of Any Pending Matters in Probate Court.** The District Court presiding over any family matter or child protection case involving a minor child shall, at the first conference, determine whether there are any proceedings involving custody or other parental rights, including adoption, concerning that child currently filed or pending before a Probate Court. A case is “pending” in a court when it has been filed in the court and is being litigated in the court, and/or is awaiting a judgment or order from the court.

(1) If the District Court learns of any such proceedings, it shall, within 7 days, conduct a telephone conference with the Probate Court to determine the appropriate action to facilitate a transfer of the matter from the Probate Court. In making that determination, the District Court shall be guided by the requirement that the District Court serve as the home court for all cases involving a minor child’s custody or parental rights, whether filed in the Probate Court or District Court, while at the same time ensuring that parties are not required to re-litigate a matter that has already been heard by the Probate Court. Before determining the most appropriate action, the District Court shall consider all relevant factors, including:

- (A) The type of case filed in each court,
- (B) The identity of the parties,
- (C) The extent of the Probate Court litigation,
- (D) The extent of the litigation or anticipated litigation in the District Court,
- (E) The length of time the proceeding has been pending in the Probate Court,
- (F) The date and nature of any already-scheduled proceedings,
- (G) Whether the Probate Court has already conducted any interim or final hearings, and

(H) Whether there are any impediments to the immediate transfer.

(2) The District Court shall make an audio record of the conference conducted with the Probate Court.

(3) If the District Court is unable to hold a conference with the Probate Court within the time specified in Rule 126(a)(1), the District Court shall, using the factors listed in that section, determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(4) As soon thereafter as possible, and in any case no more than 28 days after the conference with the Probate Court or 35 days after the District Court learns of the case pending or filed in the Probate Court, whichever is sooner, the District Court shall issue an order that immediately transfers the Probate Court proceeding to the District Court where there is a pending family matter or child protection case, unless the court determines that immediate transfer would result in undue delay or waste of judicial resources. If the District Court does not order immediate transfer, it shall issue an order that transfers the proceeding from Probate Court to District Court:

(A) As soon as a specified event in the Probate Court has occurred,

(B) As soon as the Probate Court has issued an order ruling on a matter it has under advisement, or

(C) On a date certain.

The District Court shall provide copies of the transfer order to all parties and to the Probate Court.

**(b) Procedure for Transfer.** Within 7 days after the date of transfer specified in the transfer order, the Register of the Probate Court shall file with the District Court that issued the order of transfer the original filings, orders, exhibits, and transcripts, if any, of the proceeding, together with a certified copy of all docket entries for the proceeding being transferred.

**(c) Effect of Transfer.** The transferred action shall be litigated in the District Court as if originally begun there, and the District Court shall have exclusive, continuing jurisdiction of all matters concerning the child(ren) involved in the transferred action pursuant to 4 M.R.S. § 152(5-A). Thereafter, any family

matter, guardianship, adoption, name change, or other matter involving custody or other parental rights with respect to that minor child or those minor children must be filed in the District Court.

**(d) Determining Course of Proceedings after Transfer.** Immediately after issuing the order of transfer, the District Court shall schedule a case management conference, which must be held no later than 28 days after the issuance of the transfer order. Participants in the conference shall include the parties involved in the District Court proceeding and the Probate Court case that has been transferred. At the conclusion of that conference, the court shall decide whether to consolidate for hearing the case transferred from the Probate Court with the action already pending in the District Court, and shall determine the course of both cases.

**(e) Effect of Previous Orders.** Any order of the Probate Court entered before transfer shall remain in force until modified by the District Court.

#### **Advisory Note – July 2016**

This new rule creates the procedures through which the District Courts will handle and process the guardianship, adoption, and name change cases that are transferred to them pursuant to Public Law 2015, chapter 460, “An Act To Ensure a Continuing Home Court for Cases Involving Children,” enacted by the 127th Maine Legislature, which became effective on July 29, 2016. It also provides a definition of “pending” to allow the court and parties to share an understanding of the term used in the new legislation. See the July 2015 Advisory Notes to Rule 100.

Pursuant to 18-A M.R.S. § 5-205, venue for guardianship cases in the Probate Court is in the county where the minor resides “or is present.” Pursuant to 18-A M.R.S. § 9-104, venue for adoption cases in the Probate Court is determined by a number of factors, including whether the child is being placed for adoption by the Department of Health and Human Services. Section 9-104(c) permits Probate Courts to transfer cases to other Probate Courts “in the interests of justice or for the convenience of the parties.” Similarly, 4 M.R.S. § 155(3) provides that venue for some family cases in the District Court is “in the division where either the plaintiff or the defendant resides,” but 4 M.R.S. § 155(8) allows the District Court to “transfer any case to another division for the convenience of parties or witnesses or in the interest of justice.” In order to ensure that the transfer of cases from Probate Court to District Court does, in fact, result in the establishment of a “home court”



for families, each case involving a child that is transferred from the Probate Court will be transferred to the District Court where the action involving that child is pending.

### **RULE 127. PROTECTION FROM ABUSE CASES**

**(a) Handling of Any Pending Matters in Probate Court.** The District Court presiding over any protection from abuse (PFA) matter involving the custody or parental rights of a minor child shall, at the first opportunity, determine whether there are any proceedings involving custody or other parental rights concerning that child currently filed or pending before a Probate Court. If the final hearing on a PFA request is not heard within 21 days, the District Court shall contact the Probate Court to facilitate a transfer of the pending Probate Court case. If a family matter (FM) filing occurs as a result of a PFA order, the court shall thereafter follow the directives of Rule 126 when handling the FM proceeding.

**(b) Encouraging the Filing of a Family Matter Petition.** Any PFA order that establishes or affects the custody or other parental rights of a minor child shall include a suggestion that one of the parties initiate an FM proceeding to establish a more permanent order regarding parental rights and responsibilities concerning the child. When the PFA order is inconsistent with an existing FM order, the PFA order shall suggest that one of the parties file a motion to amend the FM order. In determining whether to schedule a motion to amend that portion of a PFA order that establishes or affects the custody or other parental rights of a minor child, the court will consider the parties' action or inaction with regard to the initiation of an FM proceeding.

### **Advisory Note – July 2016**

This new rule explains the role of the District Court when handling a PFA<sup>1</sup> proceeding involving minor child(ren). By determining whether there are other cases pending in either another District Court location or in a Probate Court that address some aspect of parental rights and responsibilities concerning the minor child(ren), the court will have an improved ability to manage the multiple cases involving the child(ren). See also the July 2016 Advisory Notes to Rule 100.

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<sup>1</sup> Although 4 M.R.S. § 152(5-A) mentions protection from harassment cases as one of the possible “proceedings involving custody or other parental rights,” a court has no authority to order parental rights and responsibilities under the protection from harassment statute. See 5 M.R.S. § 4655.

Because a petition requesting a PFA order does not always result in the issuance of any order, and because the final hearings on PFA requests must be heard within 21 days unless an extension is granted, the District Court is not required to contact the Probate Court to discuss the possible need for transfer for all PFAs. When a PFA is pending longer than 21 days, however, either because a temporary order is extended or because the court has granted a motion to continue or to consolidate the PFA matter with an FM case, the District Court must contact the Probate Court and determine when to transfer any cases pending there.

In addition, the rule requires the court to “encourage” the filing of a proceeding that would result in a more permanent order establishing parental rights and responsibilities. The FDTF 2014 report recommended that a motion to amend the parental rights and responsibilities or child support provisions of a PFA should “trigger a requirement to open a family matters case.” That recommendation has been addressed here by allowing the court to determine whether and how to schedule such a motion.

4. These amendments shall be effective on July 29, 2016.

Dated: July 22, 2016

FOR THE COURT<sup>2</sup>

/s/

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LEIGH I. SAUFLEY  
Chief Justice  
DONALD G. ALEXANDER  
ANDREW M. MEAD  
ELLEN A. GORMAN  
JOSEPH M. JABAR  
JEFFREY L. HJELM  
THOMAS E. HUMPHREY  
Associate Justices

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<sup>2</sup> This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.