

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

2016 Me. Rules 06

Effective: July 29, 2016

All of the Justices concurring therein, the following amendments to the Maine Rules of Probate 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 1 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 1. SCOPE OF RULES

These rules govern the procedure in all proceedings in the Probate Courts, with the limitations stated in Rule 81. These rules also govern the procedure on removal or transfer from the Probate Courts to the District and Superior Courts and in appeals from the Probate Courts to the Supreme Judicial Court sitting as the Law Court. The rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

Advisory Note – July 2016

This new language reflects a jurisdictional change 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.

2. Rule 9 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 9. PLEADING SPECIAL MATTERS

(a) Matters involving children. Before filing any action concerning guardianship, adoption, change of name or other matters implicating custody or other parental rights of a minor child or children, the petitioner must file an affidavit with the Probate Court through which the petitioner states, under oath:

(1) There are no family matters, divorce, guardianship, protection from abuse,¹ grandparent visitation, guardianship, adoption, or name change cases concerning the minor child(ren) being litigated in or awaiting decision in any District Court; and

(2) No proceeding involving guardianship, adoption, change of name or other matters concerning custody or other parental rights of the minor child(ren) brought in the Probate Court has previously been transferred to the District Court.

If, based on the information in the affidavit, the Register of the Probate Court is satisfied that it has jurisdiction to hear the case pursuant to 4 M.R.S. § 251-A, the petition may be filed and docketed. If, based on the information in the affidavit, the Register of the Probate Court is not satisfied that it has jurisdiction pursuant to 4 M.R.S. § 251-A, the petition shall not be accepted for filing. If the Register cannot accept the petition for filing, the Register shall tell the person attempting to file the petition that he or she should contact the local District Court for further assistance.

(b) In all other matters, Rule 9 of the Maine Rules of Civil Procedure governs procedure ~~in all proceedings~~ in the Probate Courts so far as applicable.

Advisory Note – July 2016

The addition of Rule 9(a) creates a procedure that will assist the Probate Courts in determining whether they have jurisdiction over a minor guardianship,

¹ 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.

adoption, or name change case in light of 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. The amended rule uses the phrase “being litigated in or awaiting decision in” as a definition of “pending” to allow the court and parties to share an understanding of the term used in the new legislation. A form affidavit that requires filing parties to provide the required information required will be available at every Probate Court and at maineprobate.net.

3. Rule 54A of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 54A. FEES

In addition to any filing or entry fees required by law or rule, the fees of the Probate Courts shall be as follows:

- N-109, N-110, \$2.00 each;
- N-101, N-102, N-103, N-104, A-10, A-15 and A-15(a), \$5.00 each;
- Issuance of subpoena or summons, \$5.00 each;
- Certification and attestation of copies, \$5.00 each;
- Certificate, under seal of court, \$5.00 each;
- Filing of notice of removal of a proceeding to the Superior Court, \$100.00, exclusive of entry fee paid to the Superior Court;
- Filing a jurisdictional affidavit pursuant to Rule 9, \$0;
- Filing a request for transfer to the District Court pursuant to Rule 71-B, \$0;
- Filing a notice of domiciliary foreign conservator’s appointment, \$25.00;
- Demand for notice, \$25.00;
- Filing of notice of appeal to the Law Court, \$100.00, exclusive of entry fee paid to the Law Court;
- Statutory will form, \$5.00;
- Writs and Renewal of Writs, \$25.00;
- Petition for Termination of Parental Rights, \$65.00;
- Surrender and Release of Child for Adoption, \$25.00;
- Consent of non-petitioning Parent for Adoption, \$25.00;
- Claim against estate, \$25.00; and
- Filing of petition or complaint in a civil proceeding, \$120.00.

Fees for official probate court forms are addressed in Rule 84.

Advisory Note – July 2016

There will be no additional fee for filing the jurisdictional affidavit required by Rule 9(a) and/or for transferring a case to the District Court pursuant to Rule 71-B.

4. Rule 55 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 55. DEFAULT

(a) Entry. When a party who has been served with notice of a petition in formal probate proceedings for the determination of testacy or the appointment of a personal representative, guardian or conservator does not make written or oral reply as provided in Rule 12(a)(2), and that fact is made to appear by affidavit or otherwise, the register shall enter the party's default. When a party who has been served with notice of such a petition, or of any petition in other formal probate proceedings, or against whom a judgment for affirmative relief is sought in civil proceedings, has otherwise failed to plead or otherwise act or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the register shall enter the party's default, except that no default or default judgment shall be entered by the clerk in any action involving guardianship, adoption, change of name, or other matters concerning custody or other parental rights of a minor child. In any action involving guardianship, adoption, change of name, or other matters concerning custody or other parental rights of a minor child, M.R. Civ. P. 117 governs default procedure.

(b) Judgment; Setting Aside Default; Plaintiffs, Counterclaimants, Cross- Claimants. Rule 55(b)-(d) of the Maine Rules of Civil Procedure governs procedure in all formal probate proceedings and Rules 55(b)-(d) and 117 of the Maine Rules of Civil Procedure govern civil proceedings in the Probate Courts, so far as applicable, except that the appointment of a guardian ad litem or other such representative to appear on behalf of an infant or incompetent person in formal probate proceedings under paragraph (2) of subdivision (b) of ~~that rule~~ Rule 55 shall be required only upon an order of the judge.

Advisory Note – July 2016

The changes were made to Rule 55 to reflect that the issues of default and default judgments are handled differently in family cases than in other civil cases.

5. Chapter VIII B of the Maine Rules of Probate Procedure is adopted to read as follows:

VIII B. TRANSFER

RULE 71 B. TRANSFER OF PROCEEDINGS IN MATTERS INVOLVING GUARDIANSHIP, ADOPTION, CHANGE OF NAME OR OTHER MATTERS CONCERNING CUSTODY OR OTHER PARENTAL RIGHTS OF A MINOR CHILD

(a) Notice of Transfer; Transfer Request.

(1) If the Probate Court presiding over a guardianship, adoption, change of name, or other matter concerning custody or other parental rights of a minor child becomes aware that proceedings regarding custody or other parental rights concerning the child are pending in the District Court, the Probate Court shall immediately notify the parties and, within the next 7 days, shall conduct a telephone conference with the District Court where the proceedings involving the child are pending, to determine whether the child is under the exclusive, continuing jurisdiction of the District Court pursuant to 4 M.R.S. § 152(5-A). If the District Court has such jurisdiction, the courts shall consult so that the District Court may determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(2) Any party involved in a guardianship, adoption, change of name or other matter concerning custody or other parental rights of a minor child, who becomes aware that proceedings regarding custody or other parental rights concerning the child are pending in the District Court, shall immediately notify the Probate Court by filing a request for transfer. The Probate Court shall, within seven days after receipt of the request, conduct a telephone conference with the District Court where the proceedings involving the child are pending, to determine whether the child is under the exclusive, continuing jurisdiction of the District Court pursuant to 4 M.R.S. § 152(5-A). If the District Court has such jurisdiction, the courts shall consult so that the District Court may determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(b) Transfer Orders. After consulting with the Probate Court, the District Court shall issue an order that immediately transfers the Probate Court proceeding to the District Court where there is a pending case, unless the District 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:

- (1) As soon as a specified event in the Probate Court has occurred;
- (2) As soon as the Probate Court has issued an order ruling on a matter it has under advisement; or
- (3) On a date certain.

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

(c) 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.

(d) 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 children must be filed in the District Court.

(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 71B, mirrors new M.R. Civ. P. 126, which creates the procedures through which the District Courts will handle and process the guardianship, adoption and name change cases that are transferred to them.

Because many filings in the Probate Court are electronic, “original filings” will often mean hard copies created of the electronic filings. Also, when any hearing in a case being transferred has been recorded but not yet transcribed, the

Probate Court will send to the District Court the audiotapes or digital recording disk containing the record of the hearing.

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 “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 Section 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.

6. Rule 81 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 81. APPLICABILITY

(a) To What Proceedings Fully Applicable. These rules apply to all proceedings in the Probate Courts, with the exceptions set forth in subdivision (b) of this rule. They apply to proceedings on transfer to the District Court, on removal to the Superior Court, and on appeal to the Supreme Judicial Court sitting as the Law Court. A civil proceeding under these rules is appropriate whether the matter was one formerly cognizable at law or in equity and irrespective of any statutory provisions as to the form of action.

(b) Limited Applicability. These Except for the jurisdictional affidavits required for the initiation of all guardianship, adoption and name change cases involving minor children, these rules do not alter the practice prescribed by the statutes of the State of Maine or other rules of court for beginning and conducting the following proceedings in the Probate Courts:

(1) Proceedings for adoption under ~~19 M.R.S.A. § 531.~~ 18-A M.R.S. § 9-101 et seq. and 18-A M.R.S. § 9-301.

(2) Proceedings for change of name under ~~19 M.R.S.A. § 781~~ 18-A M.R.S. § 9-301.

(3) Proceedings upon child protection petitions under ~~22 M.R.S.A. § 4031(1)(B)~~.

(4) Proceedings for emergency admission to a ~~mental~~ psychiatric hospital under ~~34 M.R.S.A. § 2333(1)~~ 34-B M.R.S. § 3863.

In respects not covered by statute, the practice in these proceedings shall conform as nearly as possible to these rules, consistent with a just and speedy determination of each proceeding. The procedure on any appeal permitted in these proceedings shall be in accordance with these rules.

(c) [Reserved].

Advisory Note – July 2016

The amendments to Rule 81(a) and (b) reflect changes necessitated by 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. The amendments to Rule 81(b)(1)-(4) correct statutory references and citations.

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

Dated: July 22, 2016

FOR THE COURT²

/s/

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

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