

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF ELECTRONIC COURT SYSTEMS

2020 Me. Rules 06

Effective: December 14, 2020

All of the Justices concurring therein, the following amendments to the Maine Rules of Electronic Court Systems are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of each amendment, an Advisory Note appears after the text of the 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(A) of the Maine Rules of Electronic Court Systems is amended to read as follows:

(A) Scope. These rules define the scope of access to court records electronically stored by the Maine Judicial Branch and govern electronic filing and service of documents. Filers of documents that are conventionally filed into a court that uses the EFS must comply with these rules. They shall be construed to secure simplicity and fairness in administration and the elimination of unjustifiable expense and delay.

Advisory Note – December 2020

Rule 1 is amended to clarify that the scope of these rules includes conventional filers in a court or region that has implemented EFS.

2. Rule 2 of the Maine Rules of Electronic Court Systems is amended to read as follows:

(A) As used in these rules, unless the context otherwise indicates, the following terms have the following meanings:

....

(14) “Conventional service” and its variants mean service accomplished ~~by nonelectronic means such as by mail or in person~~ in accordance with the applicable rules of civil, criminal, or appellate procedure.

....

(17) “Court record”

....

(b) “Court record” does not include the following materials, even if they exist in connection with a specific case or proceeding:

....

(vii) Exhibits submitted at or ~~filed~~ in preparation for trial or hearing;

....

Advisory Note – December 2020

Rule 2(A)(14) of the Maine Rules of Electronic Court Systems is amended to clarify that the definition of conventional service includes service by email.

Rule 2(A)(17)(b)(vii) is amended to exclude from the definition of “court record” exhibits submitted at or in preparation for trial or hearing but not those *filed* in preparation for trial or hearing.

3. Rule 4(A) of the Maine Rules of Electronic Court Systems is amended to read as follows:

(A) Date of Accessibility.

(1) No court record will be accessible by the public until three business days after ~~acceptance by the court clerk~~ has accepted the submissions of both the case initiating documents filing of such record and proof of service of process of those documents on at least one

defendant. The date of acceptance must be determined by application of these rules.

~~(2) When a complaint is filed with a motion for approval of *ex parte* attachment or trustee process, no court records will be accessible by the public, by any other party to the case, or by attorneys of record until the court rules on the motion. When an *ex parte* motion is filed contemporaneously with a complaint, no court records will be accessible until after the court has reviewed and acted on the motion. After the court has acted on the motion, unless the court orders otherwise, all court records in the case that would otherwise be accessible will be accessible as follows:~~

~~(a) by any party to the case, or by attorneys of record, after the court clerk has accepted the submissions of both the court record and of proof of service of the case initiating documents and any applicable writ or court order issued as a result of the motion; and~~

~~(b) by the public, three business days after the court clerk has accepted the submissions of both the case initiating documents and proof of service of the case initiating documents and any applicable writ or court order issued as a result of the motion.~~

~~(3) When a motion for approval of *ex parte* attachment or trustee process is filed after the filing of the complaint, the motions and any attachments will not be accessible by the public, by any other party to the case, or by attorneys of record until the court rules on the motion. When an *ex parte* motion is filed after the filing of the complaint, the motions and any attachments will not be accessible until after the court has reviewed and acted on the motion. After the court has acted on the motion, the court records related to the *ex parte* motion will be accessible as follows:~~

~~(a) If the motion is granted, the court records related to the motion will be accessible~~

~~(i) by any party to the case, or by attorneys of record, upon acceptance by the court clerk of proof of service of the~~

motion and any applicable writ or court order issued as a result of the motion; and

(ii) by the public three days after acceptance by the court clerk of proof of service of the motion and any applicable writ or court order issued as a result of the motion.

(b) If the motion is denied, unless otherwise prohibited by any law or court order, the court records related to the motion will be accessible by the public, by any other party to the case, or by attorneys of record, when the court denies the motion.

Advisory Note – December 2020

Rule 4(A)(1) is amended to clarify that the clerk’s acceptance of both the court record and proof of service are required before the record will become accessible.

Rule 4(A)(2) and (3) are amended to clarify that accessibility of *ex parte* motions, related materials, and orders is dependent on whether the entity seeking access is a party or a member of the public.

4. Rule 31 of the Maine Rules of Electronic Court Systems is amended to read as follows:

RULE 31. GENERAL CONDITIONS FOR FILING AND SERVICE

(A) Purpose and Applicability. These rules establish procedures governing the electronic and conventional filing and service of all documents and pleadings to and from all the courts using the EFS within the Maine Judicial Branch. Upon implementation of electronic filing in each of the courts, electronic filing of all documents shall be mandatory in accordance with Rule 33 of these rules. These rules shall be construed liberally to promote the administration of justice.

(B) Conditions of Electronic Filing. To have access to the EFS, each filing party agrees to, and must:

(1) Register for access to the EFS;

(2) Comply with the registration conditions when using the EFS; and

(3) Maintain one or more working email addresses at which the filer agrees to accept email notification and service from the EFS.

(C) Forms. Forms developed by the Maine Judicial Branch are the official court forms and, if an applicable court form exists, it must be used whether filed electronically or conventionally.

Advisory Note – December 2020

Rule 31(A) and (C) of the Rules of Electronic Court Systems are amended to clarify that conventional filers in a court or region that has implemented EFS must comply with these rules and that conventional filers in those courts also must use the current Maine Judicial Branch forms.

5. Rule 33 of the Maine Rules of Electronic Court Systems is amended to read as follows:

RULE 33. USE OF THE ELECTRONIC FILING SYSTEM

(A) Registration. To use the EFS, a filing party must register as a user and execute a user agreement. Executing a user agreement constitutes consent to receive electronic notice and electronic service of all documents through the EFS, except for service of process, warrants, and summonses, which shall be served in accordance with M.R. Civ. P. 4 and M.R. Crim. P. 4.

(B) Required Use of the EFS. Except as provided in subdivisions (C) and (D), use of the EFS in all case types is mandatory for required electronic filers. “Required electronic filers” are:

(1) Attorneys acting on behalf of a party or themselves in a court case;

(2) State, county, and municipal filers except for

(a) Maine Law Enforcement, meaning all officers defined in 25 M.R.S. § 2801-A; ~~and~~

(b) Bail Commissioners, as defined in 15 M.R.S. § 1023; and

(c) Representatives of the Maine Department of Health and Human Services filing Requests for Preliminary Protection Orders pursuant to 22 M.R.S. § 4034; and

(3) Self-represented litigants filing or intending to file more than six cases that are filed and are not emergency cases in the current calendar year. For purposes of this subdivision, emergency cases are protection from abuse or harassment requests, mental health requests, requests for emergency guardianship of a minor, and three-party child protection petitions.

(C) Exemption to Required Use of the EFS. A self-represented party in an emergency case as defined in Rule 33(B)(3) is not a required electronic filer.

~~**(C)**~~ **(D) Good Cause Exceptions to Required Use of the EFS.** A required electronic filer may be excused from mandatory use of the EFS only upon motion and a showing of good cause. Good cause means circumstances that would render electronic filing such a hardship that the required electronic filer would be denied access to the court. For the limited purpose of seeking an exception to mandatory electronic filing and service, a required electronic filer may file a motion conventionally. If the court grants a motion for a good cause exception, the court shall establish the scope of the exception. The court may amend or revoke the good cause exception on its own initiative or upon motion of a party.

~~**(D)**~~ **(E) Contact Information.** A filer who is not required to use the EFS must provide the court with a mailing address for service of documents, and must notify the court in writing of any change of mailing address. If the filer has alleged in an affidavit or pleading under oath that the health, safety, or welfare of the filer or a minor child would be jeopardized by disclosure of the address, then the clerk shall seal the address from the public and all other parties.

~~**(E)**~~ **(F) Elective Use of the EFS.** Even where use of the EFS is not required, a filer in a case may elect to register and use the EFS in compliance with subdivision (A). After electing to use the EFS, the filer must file, serve,

and accept service electronically for the duration of the case, unless excused by the court upon a motion and showing of good cause.

~~(F)~~ **(G) Misuse of the EFS.** Misuse occurs when any user attempts to harm, disrupt, alter, or interfere with the EFS or any records maintained in the system, or attempts to use or access information on the system without proper authorization. Misuse of the EFS might subject the user to criminal prosecution. Misuse may also result in suspension or loss of a user's registration or any other penalty that may be imposed by the court. Misuse of the EFS by attorneys may constitute a violation of the Maine Rules of Professional Conduct. Attorneys are responsible for any misuse of the EFS by third parties whom the attorney has authorized or directed to use that attorney's individual or firm EFS account.

Advisory Note – December 2020

Rule 33(A)(2)(c) is amended to exempt from mandatory electronic filing representatives of the Department of Health and Human Services filing Requests for Preliminary Protection Orders.

Rule 33(C) is added to provide that a self-represented litigant does not have to file emergency cases electronically.

The subsequent subdivisions are redesignated as subdivisions (D) through (G).

The heading of what is now subdivision (D) is amended to clarify that the good cause exceptions are exceptions to required use of the EFS.

6. Rule 34(B)(2) of the Maine Rules of Electronic Court Systems is amended to read as follows:

(B) Documents or Materials Not Filed in Electronic Format

....

(2) Documents or materials that must be filed conventionally include:

(a) Documents subject to *in camera* inspection, including those produced by the Department of Health and Human Services pursuant to 22 M.R.S. § 4008;

(b) A record or image that is barred from electronic transmission or storage by law, including sexually explicit images of a minor;

(c) Proposed orders ~~drafted by attorneys during court proceedings~~; and

(d) Anything else required to be filed conventionally by law or court order.

Advisory Note – December 2020

Rule 34(B)(2)(c) is amended to clarify that all proposed orders are required to be filed conventionally.

Rule 34(B)(2)(d) is amended to clarify that anything required to be filed conventionally by law must be filed conventionally.

7. Rule 35(B) of the Maine Rules of Electronic Court Systems is amended to read as follows:

(B) File Date. A “day” begins at 12:00:00 a.m. and ends at 11:59:59 p.m. in the time zone where the courthouse is located. For a document that is electronically submitted between 12:00:00 a.m. and 11:59:59 p.m. in the time zone where the courthouse is located on Monday through Friday, the “file date” will be the day it is submitted. If a document is submitted on a Saturday, Sunday, or legal holiday, the file date will be the next business day. For any questions of timeliness, the time and date registered by the EFS will be determinative. For a document electronically submitted, the file date will apply for purposes of meeting the statute of limitations or any other filing deadlines, even if the document is accepted by the clerk on a later date, except as provided in subdivision (D) of this rule. A conventionally filed document is deemed submitted when presented to the court clerk.

Advisory Note

The court clerk does not review for legal sufficiency of the filing, which is clearly a judicial function. The court clerk's review is similar to that described in M.R. Civ. P. 5(f). The court clerk's review includes, for example, signatures, bar number, and duplicate filings ~~required fees or waiver request~~.

Advisory Note - December 2020

Rule 35(B) of the Rules of Electronic Court Systems is amended to clarify the definition of a day. In addition, the Advisory Note from the initial adoption of the Rules is amended to clarify the scope of a clerk's review of filings.

8. Rule 37(D) of the Maine Rules of Electronic Court Systems is amended to read as follows:

(D) Signatures ~~of Registered Users~~ Required for Filing. ~~The username and password required to submit documents to the EFS shall serve as that registered user's signature. The~~ Whenever a signature is required for filing a pleading or motion and that pleading or motion is electronically filed, ~~the~~ document shall bear a scanned, facsimile, or a typographical signature along with the typed name, address, email address, and telephone number of the registered user and, if the ~~registered user~~ filer is an attorney, the attorney's bar number.

Advisory Note - December 2020

Rule 37 is amended to add "scanned" as an acceptable signature format.

Dated: December 14, 2020

FOR THE COURT,*

ANDREW M. MEAD
Acting Chief Justice

ELLEN A. GORMAN
JOSEPH M. JABAR
THOMAS E. HUMPHREY
ANDREW M. HORTON
CATHERINE R. CONNORS
Associate Justices

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