

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

2021 Me. Rules 04

Effective: October 18, 2021

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 the 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 128 of the Maine Rules of Civil Procedure is adopted to read as follows:

**RULE 128. PETITIONS TO TERMINATE PARENTAL RIGHTS UNDER
TITLE 19-A**

(a) Petition. Petitions to terminate parental rights in a family matter may be filed pursuant to 19-A M.R.S. § 1658. If the petition is filed under 19-A M.R.S. § 1658(2)(C), the petitioner shall attach the final order of parental rights and responsibilities. If a petition is filed that does not comply with 19-A M.R.S. § 1658(1-A), the filing is incomplete. The court shall notify the petitioner that the filing is incomplete and that the petitioner has 21 days from the date of the incomplete filing to complete the filing. After the 21 days to complete the filing have expired, the court shall dismiss without hearing any petition that does not meet all of the requirements in 19-A M.R.S. § 1658(1-A). The court shall send notice of the dismissal to all parties.

(b) Service. Once the court determines the petition may proceed, the court shall schedule an initial status conference. The petitioner shall then serve the petition, accompanying affidavit, and notice of status conference on the

respondent parent(s) at least 10 days before the date of the initial status conference. Service must be made in accordance with Rule 103.

(c) Response. A party who intends to respond to a petition to terminate parental rights must file a response within 21 days after being served and shall serve the response on all parties to the proceeding. If the responding party does not file a written response, the responding party may still appear at the hearing and respond to the petition.

(d) Payment of Counsel and Guardian ad Litem.

(1) Payment of Counsel. The Maine Commission on Indigent Legal Services shall pay for the services of an attorney appointed under 19-A M.R.S. § 1658(2-A).

(2) Payment of Guardian ad Litem. The court shall pay for the services of a guardian ad litem appointed under 19-A M.R.S. § 1658(2-A). The court may reallocate the responsibility for payment to the parties at the final hearing, but the court shall not allocate responsibility for payment to any party found to be indigent.

(e) Abstract of Order on Petition to Terminate Parental Rights. If the court issues a judgment granting the petition to terminate parental rights, the court shall issue an abstract of the termination of parental rights order (form FM-267 Abstract of Order Terminating Parental Rights and Responsibilities) for the parties.

(f) Closed Proceedings and Records. All proceedings and records subject to this subsection shall be closed to the public, unless the court orders otherwise. Requests for access to closed records under this subsection shall be made as follows, unless otherwise ordered by the court:

(1) The person seeking access shall file a motion for access with an affidavit alleging under oath specific facts explaining how the records are relevant to the party's participation in a pending case. The motion for access and affidavit shall be filed in the pending case to which the records are claimed relevant.

(2) Motions for access and responses shall be sealed from public access until the court orders otherwise.

(3) The court shall grant access to records in a termination of parental rights case only if it finds that the movant has shown, by a preponderance of the evidence, that there is a compelling interest in access to these records. If the court allows access, it may impose reasonable conditions to protect the privacy interests at issue, including limiting access to counsel of record, providing the parties in the termination of parental rights case notice and the opportunity to respond to the request, reviewing and redacting records, and imposing restrictions on further dissemination of the records

(g) Recording. All hearings held in any case involving a petition for termination of parental rights shall be recorded.

Advisory Note – October 2021

Rule 128 of the Maine Rules of Civil Procedure establishes procedures for petitions to terminate parental rights filed pursuant to 19-A M.R.S. § 1658. *See* P.L. 2021, ch. 340, § 2 (effective Oct. 18, 2021).

2. Rule 129 of the Maine Rules of Civil Procedure is adopted to read as follows:

RULE 129. QUALIFIED RESIDENTIAL TREATMENT PROGRAM REVIEW

(a) Applicability. This rule shall apply when a child who is in the custody of the Department of Health and Human Services (the department) under Title 22 of the Maine Revised Statutes is placed in a children’s residential treatment program that qualifies as a qualified residential treatment program (QRTP).

(b) Notice of Placement. The department shall file a notice and request for a review hearing (the notice of placement) with the court within 7 days after placing a child into a children’s residential treatment program that qualifies as a QRTP as that term is defined in 22 M.R.S. § 4002(6-C). The notice of placement shall state the date of placement, the name of the provider, and the location of

the placement. The department shall provide a copy of the notice of placement to all counsel, self-represented parties, and the child's guardian ad litem.

(c) Records for Initial Placement Review. Within 42 days after a child's placement in a QRTP, the department shall file with the court a needs assessment of the child prepared by a qualified individual as that term is defined in 22 M.R.S. § 4002(6-B). The assessment shall comply with all the requirements set forth in 42 United States Code, Section 675a(c), as amended. The needs assessment shall assist the court in determining the following:

(1) Whether the needs of the child cannot be met through placement in a family foster home as defined in 22 M.R.S. § 8101(3) and instead support placement in a QRTP;

(2) Whether the placement of the child in the QRTP provides effective and appropriate care in the least restrictive environment; and

(3) Whether the placement of the child in the QRTP is consistent with the short-term and long-term goals for the child as specified in the permanency plan of the child if a permanency plan has been developed under 22 M.R.S. § 4038-B.

(c) Initial Placement Review. The court shall review every initial placement of a child in a QRTP and determine the appropriateness of the placement within 60 days after the placement as required by 22 M.R.S. § 4038(8).

(d) Records for Continued Placement Review.

(1) After the initial placement review, for as long as a child remains placed in a QRTP, at least 14 days before every judicial review or permanency hearing, the department shall file with the court the following records:

(A) An ongoing needs assessment, as prepared by qualified individuals, of the strengths and needs of the child, which includes records concerning the specific services or treatment being provided to the child at the QRTP and the length of time the child is expected to need the treatment or services; and

(B) Records of the department's specific efforts to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

(2) The records filed under subdivision (d)(1) shall assist the court in determining the following:

(A) Whether the needs of the child cannot be met through placement in a family foster home as defined in 22 M.R.S. § 8101(3) and instead support placement in a QRTP;

(B) Whether the placement of the child in the QRTP provides effective and appropriate care in the least restrictive environment; and

(C) Whether the placement of the child in the QRTP is consistent with the short-term and long-term goals for the child as specified in the permanency plan of the child if a permanency plan has been developed under 22 M.R.S. § 4038-B.

(e) Continued Placement Review. The court shall review the continued placement of a child in a QRTP at every judicial review and permanency hearing pursuant to 22 M.R.S. § 4038(9).

(f) Admissibility of Records. In a hearing to review the initial or continued placement of a child in a QRTP, records of evaluations of the child and medical, behavioral, and mental health records of the child are admissible upon showing that the records contain information relevant to the issues before the court, as long as the records are made available to counsel at least 10 days prior to the hearing.

(g) Notice of Discharge. Upon discharge of a child from a QRTP, the department shall file a notice of discharge with the court no later than the date of the judicial review or permanency hearing, or within 14 days after the discharge, whichever occurs first. The department shall provide a copy of the notice of discharge to all counsel, self-represented parties, and the child's guardian ad litem.

Advisory Note – October 2021

Rule 129 of the Maine Rules of Civil Procedure establishes procedures for review, pursuant to 22 M.R.S. § 4038(8)-(10), of a child's placement in a qualified residential treatment program when the child is in the custody of the Department of Health and Human Services. *See* P.L. 2021, ch. 210 (effective Oct. 18, 2021).

Dated: October 5, 2021
Revised to correct clerical error:
October 8, 2021

FOR THE COURT,*

_____/s/_____
VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
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.