STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE

Effective April 2, 2007

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure, are hereby adopted, prescribed, promulgated, and amended, to be effective April 2, 2007.

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Committee Note appears after the text of each amendment. The Advisory Committee Note states the reason for recommending the amendment, but the Advisory Committee Note is not part of the amendment adopted by the Court.

1. Subdivision (a) of RULE 16 of the Maine Rules of Civil Procedure is amended to read as follows:

(a) **Case Management.**

(1) **Standard Scheduling Order**. Unless otherwise ordered by the court, after the filing of the answer in any civil action in the Superior Court other than proceedings pursuant to Rule 80, 80B or 80C, the court shall enter a standard scheduling order setting deadlines for the joinder of additional parties, the exchange of expert witness designations and reports, the scheduling and completion of an alternative dispute resolution conference when required by Rule 16B, the completion of discovery, the filing of motions, and the placement of the action on the trial list. The standard scheduling order shall not be modified except in accordance with Rule 16(a)(2) or on motion for good cause shown. The joinder of additional parties after the standard scheduling order has issued shall not require a modification of the scheduling order except on motion for good cause shown.

(2) Modified Scheduling Order. On motion by a party filed within 30 days of the entry of the standard scheduling order, or at any time on the court's own initiative, the standard scheduling order may be modified or supplemented to address the requirements of a case not addressed by the standard scheduling order. The court, after conferring with the parties and considering the nature of the case, may in the modified or specialized scheduling order establish deadlines, schedules, and other orders for the efficient preparation of the case for trial. Once entered, the modified scheduling order shall not be further modified except for good cause shown.

Advisory Committee Note

This amendment is designed to provide parties and the court with a choice for differentiated case management. Once the parties have appeared, the Superior Court enters a form scheduling order that sets deadlines for the case. The amendment to Rule 16(a) establishes a subdivision (a)(1), which is directed to the form scheduling order, now called the "standard" scheduling order in the amendment. A “standard” scheduling order will issue unless, in a few cases, the court has previously issued a specialized scheduling order governing the particular proceeding. The deadlines in the “standard” scheduling order may not be modified under the rule unless "good cause" can be shown. Although the standard scheduling order should govern the great majority of cases, there are cases in which the form order may not serve the requirements of an individual case.

The adoption of Rule 16(a)(2) permits the court, on its own or on a motion, filed within 30 days of the scheduling order, to modify the order without having to meet the exacting "good cause" standard. A Rule 16(a)(2) modification of the scheduling order should be the exception, rather than the routine. The new subdivision (a)(2) purposely does not specify the kinds of cases in which a departure from the form order is warranted, but obvious examples include complex or multi-jurisdictional cases, cases with many parties and counsel, and extremely simple cases that do not require the full standard treatment. A motion for modification to the standard scheduling order should specify why the standard order does not meet the requirements of the case and should proffer an alternative order, preferably with the agreement of all counsel. The court is intended to have broad discretion to decide whether to depart from the standard order and, if so, on the schedules and orders made to address the particular requirements of the case.

2. RULE 16A of the Maine Rules of Civil Procedure is amended to read as follows:

(a) Orders Prior to Trial. In any action in the District Court, the court may issue a scheduling order, trial management order, or other order directing the future course of the action. The court may issue standard orders, in a form approved by the Chief Judge of the District Court, directing the future course of the action without the signature of a judge, and when so issued such orders are binding on the parties.

(b) Conferences. The court may also schedule a conference, issue a pretrial order or, in its discretion, direct the attorneys for the parties and/or the parties to appear before it for a conference to ~~consider~~ address:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses; and

(5) Such other matters as may aid in the disposition of the action.

The court may, in its discretion, permit attendance at the conference by telephone or video conferencing.

(c) Orders after Conference. If a conference is held, ~~T~~ the court shall make an order which recites the action taken at the conference~~., the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel;~~ and such order, when entered, controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish a ~~pretrial~~ calendar on which actions may be placed for consideration as above provided.

(d) Sanctions. If a party fails to comply with the requirements of this rule, to attend a ~~pretrial~~ conference held under this rule, or to comply with any order made

hereunder, the court shall impose on the party or the party's attorney, or both, such sanctions as the circumstances warrant, which may include the dismissal of the action or any part thereof with or without prejudice, the default of a party, the exclusion of evidence at the trial, and the imposition of costs, including attorney fees and travel. The court may expressly order, where appropriate in its discretion, that the costs of such sanctions be borne by counsel and that they shall not be passed on to counsel's client.

Advisory Note

The District Court needs more options to manage its dockets, including self-executing tools such as scheduling orders. Rule 16A is expanded to provide some of those options. It is also separated into several subdivisions to improve readability. The current rule limits pretrial conferences to attorneys. The suggested amendment updates the rule to reflect that many self represented parties may be required to attend pretrial conferences. Also, the rule expressly authorizes standard orders, in a form approved by the Chief Judge of the District Court, to be issued without being signed by a judge. Requiring an individual judge to sign every order issued under this rule would be unduly burdensome. Finally, the rule is amended to make clear that sanctions for non-compliance apply to all orders issued under the rule, not just pretrial conferences and orders.

3. The introductory sentence and subdivisions (a) and (i) of RULE 16B of the Maine Rules of Civil Procedure are amended to read as follows:

This rule is applicable to cases filed in the Superior Court and cases removed to the Superior Court from the District Court. ~~when the original filing date for the complaint is on or after January 1, 2002.~~

(a) Applicability. All parties to any civil action filed in or removed to the Superior Court, except actions exempt in accordance with subsection (b) of this rule, shall, within 60 days of the date of the Rule 16(a) scheduling order, schedule an alternative dispute resolution conference which conference shall be held and completed within 120 days of the date of the Rule 16(a) scheduling order. By agreement of all parties, reported to the court in writing within 120 days of the date of the Rule 16(a) scheduling order, the time for the completion of the alternative

dispute resolution conference shall be extended for a period not to exceed 180 days from the date of the Rule 16(a) scheduling order.

. . . .

(i) Jury Fee. For cases required to have an alternative dispute resolution conference in accordance with this rule, payment of the civil jury fee required by Rule 38(b) or Rule 76C, shall be deferred until ~~150~~ 210 days after the date of the Rule 16(a) scheduling order.

. . . .

Advisory Committee Note

Rule 16B is amended in an effort to make alternative dispute resolution more flexible. Much experience has been gained since the Supreme Judicial Court first promulgated Rule 16B in 2002. On the whole, the program has been very successful in creating settlements in cases that otherwise might have persisted in the process before ultimately settling, as the large majority of cases do. However, many cases may not be ready for ADR when first filed. More time may be required to gather the information the parties need to evaluate their cases. The amendments are intended to provide more flexibility in scheduling mediations.

On occasion, parties agree that a case is not ready for productive ADR and may need additional time to prepare the case. Rule 16B(a) is amended to permit the parties to agree to an automatic extension of the ADR process not to exceed an additional 60 days. To obtain the extension, the parties notify the court by letter or by a filing recording their agreement to the extension. To assist the ADR process and to control costs, subdivision (i) and the form scheduling order are amended to provide that the time for paying the jury fee is extended to 210 days in all cases.

4. Subdivisions (d) and (h) of RULE 56 of the Maine Rules of Civil Procedure is amended to read as follows:

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and

the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly. In the event that a moving party's motion for summary judgment is denied in whole or in part, facts admitted by the parties solely for the purpose of the summary judgment motion shall have no preclusive effect at trial upon any third party who did not participate in the summary judgment proceeding.

(h) Statements of Material Fact. In addition to the material required to be filed by Rule 7, a motion for summary judgment and opposition thereto shall be supported by statements of material facts as addressed in paragraphs (1), (2), (3), and (4) of this rule.

(1) *Supporting Statement of Material Facts.* A motion for summary judgment shall be supported by a separate, short, and concise statement of material facts, set forth in numbered paragraphs, as to which the moving party contends there is no genuine issue of material fact to be tried. Each fact asserted in the statement shall be set forth in a separately numbered paragraph supported by a record citation as required by paragraph (4) of this rule.

(2) *Opposing Statement ~~of Material Facts.~~* A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise opposing statement ~~of material facts~~. The opposing statement shall admit, deny or qualify the facts asserted by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. Each such statement shall begin with the designation "Admitted," "Denied," or "Qualified" (and, in the case of an admission, shall end with such designation). In addition to any denials or qualifications, the party opposing summary judgment may note any objections to factual assertions made by the moving party as set forth in paragraph (i). The opposing statement may contain in a separately titled section any additional facts which the party opposing summary judgment contends raise a disputed issue for trial, set forth in separate numbered paragraphs and supported by a record citation as required by paragraph (4) of this rule.

(3) *Reply Statement of Material Facts.* A party replying to the opposition to a motion for summary judgment shall submit with its reply a separate, short, and concise ~~statement of material facts which shall be~~ response limited to ~~any~~ the additional facts submitted by the opposing party and any objections to denials or qualifications as set forth in paragraph (i). The reply statement shall admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts, and unless a fact is admitted, shall support each denial or qualification by a record citation as required by paragraph (4) of this rule. Each reply statement shall begin with the designation "Admitted," "Denied," or "Qualified" (and, in the case of an admission, shall end with such designation).

(4) *Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required.* Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

5. Subdivision (i) is added to RULE 56 of the Maine Rules of Civil Procedure to read as follows:

(i) Motions to Strike Not Permitted.

(1) Motions to strike factual assertions, denials, or qualifications contained in any statement of material facts filed pursuant to this rule are not permitted. If a party contends that the court should not consider a factual assertion, denial, or qualification, the party may set forth an objection in either its opposing statement or in its reply statement and shall include a brief statement of the reason(s) for the objection and any supporting authority or record citations.

(2) A party moving for summary judgment may respond in its reply statement to any objections made by the party opposing summary judgment. If the moving party objects in its reply statement to any factual assertion, denial, or qualification made by the opposing party, the party opposing summary judgment

may file a response within 7 days of the filing of the reply statement. Such a response shall be strictly limited to a brief statement of the reason(s) why the factual assertion should be considered and any supporting authority or record citations.

Advisory Committee Note

The purpose of these amendments is to make Rule 56 practice more uniform and efficient and, in particular, to eliminate the practice of filing motions to strike in order to raise or preserve objections to factual assertions contained in statements of material facts filed in connection with motions for summary judgment. This practice has led to a situation where motions for summary judgment, which are often complicated enough in their own right, have spawned multiple subsidiary motions and needless additional filings in the form of motions to strike and objections thereto.

The second major change is that a new last sentence in subsection (d) explicitly states that facts admitted for summary judgment shall have no preclusive effect at trial upon any third party who did not participate in the summary judgment proceeding.

There is a related concern among practitioners that a court may not grant partial summary judgment but will instead determine factual issues at the summary judgment stage with preclusive effect at trial. The Committee did not amend the rule to address this concern for two reasons. First, the existing rule makes clear that such a finding under subdivision (d) occurs only after the court "by interrogating counsel" determines those facts "without substantial controversy," a finding that could not be made if counsel in this process indicates that facts are disputed. Second, the amended rule states that there is no such preclusive effect on third parties for facts admitted on summary judgment. The Committee also observed that the procedure of subdivision (d) appears to be used rarely if at all. Until real problems arise, there seems to be little need to amend the rule to eliminate a process that could potentially be useful if properly employed.

The rule continues to provide that a party opposing summary judgment must admit, deny, or qualify each statement in the moving party's statement of material facts. Because motions to strike assertions contained in statements of material fact have been eliminated, the amended rule provides that parties may also object to

factual assertions, denials, or qualifications in their statements of material facts. The grounds for such objections are specified in subparagraph (i).

The reply statement previously was limited only to the so-called additional facts in the opposing statement of material facts, but as part of this amendment the reply statement may now also be used to object to denials or qualifications in the Rule 56(h)(2) statement submitted by the party opposing summary judgment. The objection should be limited to a short and concise statement of the basis for the objection with a statement of authority or a record citation. The objection, however, is not an excuse for not responding to the factual statement. The statement should still be admitted, denied or qualified subject to the objection.

These amendments also provide that if objections are raised for the first time in a reply statement of material facts, the opposing party may file a response to the objections within seven days. Such response, however, is to be strictly limited to a brief statement of why the objection is invalid along with any supporting authority or record citations.

In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts. In short, the statements of fact should be precisely what the rule requires: "short and concise." Rule 56(h)(1).

Where a party raising an objection to factual assertions or disputes contained in a statement of material facts wishes to direct the court's attention to portions of the record which support the objection, the party shall set forth citations to the relevant portions of the record in its opposing or reply statement of facts. Thus, all citations to the record should be found in the original statement of material facts, in the opposing statement of material facts, or in the reply statement of material facts. On a motion for summary judgment, the court is not obliged to review any portions of the record that are not identified in any of the statements of material fact filed in connection with the motion.

The parties may bring any unusual issues presented by a motion for summary judgment to the attention of the court in their memoranda of law or as otherwise permitted by the rules without filing motions to strike. For instance, if a statement of material facts cites to documents or witnesses that were requested but not disclosed during discovery, the opposing party may, in addition to raising an

objection to this effect, also bring the discovery violation to the attention of the court by requesting a conference pursuant to Rule 26(g) while the summary judgment motion is pending.

6. Subdivision (a) of RULE 62 of the Maine Rules of Civil Procedure is amended to read as follows:

(a) Automatic Stay, Exceptions—Injunctions and Receiverships.

Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ~~30~~ 21 days after its entry or until the time for appeal from the judgment as extended by the rules governing appeals has expired. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action or an order relating to the care, custody and support of minor children or to the separate support or personal liberty of a person or for the protection of a person from abuse or harassment shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (d) of this rule govern the suspending, modifying, restoring or granting of an injunction during the pendency of an appeal.

Advisory Committee Note

Rule 62(a) is amended to recognize that the time when a judgment becomes final and subject to enforcement is now 21 days after entry. M.R. App. P. 2(b)(3). The amendment also recognizes the special proceedings to protect people from abuse and harassment, 19-A M.R.S. §§ 4001 to 4014 (2006) and 5 M.R.S. §§ 4651 to 4660-A (2006). An amendment to subdivision (a) is added to provide that orders under the relief provisions of these statutes are not stayed pending appeal. The intent of the amendment is to maintain court-ordered personal safety protections during the appeal. In individual cases, however, relief ordered by the court may be appropriately and safely stayed pending appeal, as in the case of orders for the payment of money. In such cases, the burden is on the appellant to move the court to "otherwise order" a stay during the pendency of the appeal of all or part of the relief ordered. The trial court is invested by subdivision (a) with broad discretion to make such orders as are required by the case. In addition, subdivision (g) empowers the reviewing court to "make any order appropriate" to preserve the status quo or to ensure the effectiveness of the judgment subsequently to be entered.

7. RULE 84 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 84. FORMS

~~The forms contained in the Appendix of Forms are examples of forms that are intended to indicate the simplicity and brevity of statement that the rules contemplate.~~ The Supreme Judicial Court, the Chief Justice of the Superior Court, and the Chief Judge of the District Court may from time to time adopt official forms for use in their respective courts.

Advisory Committee Note

The amendment to Rule 84 eliminates the reference to an Appendix of Forms. That Appendix was eliminated from the rules several years ago. Most civil forms may be observed and printed from the Court's web site or obtained from court clerk's offices.

8. These amendments shall take effect April 2, 2007.

Such rules as thus adopted and amended shall be recorded in the Maine Reporter.

Dated: February 27, 2007

_____
LEIGH I. SAUFLEY
Chief Justice

_____
ROBERT W. CLIFFORD
Associate Justice

HOWARD H. DANA, JR.
Associate Justice

DONALD G. ALEXANDER
Associate Justice

SUSAN CALKINS
Associate Justice

JON D. LEVY
Associate Justice

WARREN M. SILVER
Associate Justice