

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO THE
MAINE RULES OF CIVIL PROCEDURE

2014 Me. Rules 07

Effective: September 1, 2014

All of the Justices concurring therein, the following amendment to the Maine Rules of Civil Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below.

1. Chapter XIV of the Maine Rules of Civil Procedure is adopted to read as follows:

XIV. BUSINESS AND CONSUMER DOCKET PROCEDURAL RULES

RULE 130. PURPOSE, SCOPE, AND OTHER RULES

(a) Purpose and Scope. The Business and Consumer Docket Procedural Rules (referred to herein as the BCD Procedural Rules) are established to promote the purpose and goals of the Business and Consumer Docket (BCD) and to facilitate the proceedings of all cases placed on the BCD.

(1) Statewide Docket; Management. The BCD shall be a statewide docket comprised of selected actions involving business and/or consumer disputes, and shall be managed by judges or justices from either trial court designated by the Chief Justice of the Supreme Judicial Court.

(2) Goals. The goals of the BCD are to provide predictable judicial action in selected cases involving business and/or consumer disputes, avoid placing unnecessary burdens on the court and the litigants in such cases, keep litigation costs reasonable, and promote an effective and efficient process for resolving such disputes.

(3) Eligibility for Transfer. Cases that may be considered for transfer to the BCD include pending and new jury and nonjury civil actions and family matters that focus on a business dispute, in which (A) the principal claim or claims

involve matters of significance to the transactions, operations, or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity; and (B) the case requires specialized and differentiated judicial management.

(b) Integration with Other Rules. The BCD Procedural Rules supplement and modify other Maine Rules of Civil Procedure, including the Family Division rules, M.R. Civ. P. 100 et seq. Unless modified by the BCD Procedural Rules, all other Maine Rules of Civil Procedure are applicable to cases on the BCD, consistent with the purpose and goals of the BCD.

RULE 131. CASE FILING, TRANSFER, AND IDENTIFICATION

(a) Filing Cases; Transfer. No case may be commenced on the BCD through filing. A case must be transferred to the BCD from the originating court by Application or Judicial Recommendation. The “originating court” is the court in which the case is pending.

(1) Application for Transfer to BCD. Any party seeking to transfer a case to the BCD shall complete and file, with the originating court, an application to transfer the case to the BCD using an approved BCD form and setting forth the reasons in support of the transfer. An application for transfer may be made at any time and more than one party may join in the application.

(2) Judicial Recommendation for Transfer to BCD. At any time after all named defendants have appeared or been defaulted in a case, any trial judge or justice may *sua sponte* file, in the originating court, a recommendation for transfer to the BCD using an approved BCD form and setting forth the reasons in support of the transfer.

(b) Objection to Transfer to BCD. Any party objecting to the application of a party or recommendation of a trial judge or justice for transfer to the BCD shall file with the originating court a written objection, no more than 2 pages in length, setting forth the specific reasons for the objection. Any objection shall be deemed waived unless filed with the originating court within 14 days of the filing of the application or recommendation for transfer; provided, however, if an application is filed with the initial complaint, the written objection must be filed no later than the objecting party’s answer or other response to the complaint or that

party's deadline for filing such answer or other response, whichever first occurs. No reply to the objection shall be permitted.

(c) Decision to Allow Transfer to BCD. The decision to accept or reject a case for transfer to the BCD shall be within the sole discretion of the BCD judge reviewing the transfer application. The decision shall be made summarily, without hearing, unless the BCD judge concludes that a hearing is necessary.

(1) Transfer Orders are not Subject to Review or Appeal. Parties shall not have the right to a review or appeal of decisions regarding the transfer of a case to or from the BCD.

(2) Transfer to BCD. If a case is ordered transferred to the BCD, the case file shall be transferred forthwith from the originating court to the BCD. The transfer shall be effective when the order of transfer is signed by the BCD judge.

(3) BCD Docket Number. When a case is ordered transferred to the BCD, it shall be assigned a BCD docket number that will replace the docket number assigned to the case by the originating court.

(d) Return to Originating Court upon Subsequent Joinder of Parties. In the event that a party joined in an action after it has been transferred to the BCD objects to the transfer, that party may, within 14 days of being joined in the action, file a written objection to the transfer, no more than 2 pages in length, setting forth the specific reasons for the objection. No reply to the objection shall be permitted. The BCD judge shall decide whether the objection should be sustained or overruled and, if sustained, the case shall be transferred to the originating court. The decision shall be made summarily, without hearing. If the case is ordered transferred from the BCD to the originating court, the transfer shall be effective when the order of transfer is signed by the BCD judge.

RULE 132. CASE MANAGEMENT

(a) Case Management Conference.

(1) Scheduling of Conference. After the transfer of a case to the BCD, the court will issue an order scheduling a case management conference to define the future course of proceedings in the case. The order will, at a minimum, identify

the issues to be addressed at the conference, the deadlines to be established at the conference, and the responsibilities of the parties in advance of the conference.

(2) *Mandatory Attendance.* All unrepresented parties and all lead trial counsel and local counsel for each represented party shall attend the case management conference in person unless the court authorizes attendance by other means.

(b) **BCD Scheduling Order.** At the completion of the case management conference, the court shall enter a scheduling order setting deadlines for the joinder of additional parties, the exchange of expert witness designations and reports, the completion of discovery, participation in Alternative Dispute Resolution, and the filing of motions, including any dispositive motion. In the scheduling order, the court shall also schedule the matter for trial and address any other matters relevant to the future course of proceedings in the case, including, where appropriate, the scheduling of a summary judgment pre-filing conference pursuant to Rule 134(b) or an opportunity for a Judicially Assisted Settlement Conference. The scheduling order may thereafter be modified or revised, as the court in its discretion, deems necessary or appropriate, to meet the purpose and goals of the BCD. The parties shall not deviate from deadlines and requirements established in the scheduling order or any modifications unless authorized by the court. Failure to comply with the scheduling order may result in sanctions.

(c) **Existing Scheduling Orders.** When standard or modified scheduling orders have been entered in the originating court, regardless of whether the orders were entered pursuant to Rule 16 or 16A, those orders shall be superseded by any scheduling orders or modifications entered after the case is transferred to the BCD. Any existing scheduling order shall remain in effect unless or until superseded by a BCD scheduling order or stayed or modified upon motion.

RULE 133. DISCOVERY

(a) **Presumptive Discovery Limits.** Unless otherwise authorized by the provisions of the BCD scheduling order, each party may serve upon any other party no more than

(1) 30 interrogatories, including all subparts;

(2) 30 requests, including all subparts, for production of documents;

(3) 20 requests, including all subparts, for admissions; and

(4) 5 notices of deposition or subpoenas for deposition for persons other than experts.

(b) Discovery Dispute Conference Request. A moving party may request a Rule 26(g) conference through electronic communication that complies with Rule 138 without submitting a paper copy of the request. Electronic transmittal of the request constitutes a representation to the court, subject to Rule 11, that the moving party has complied with the requirements of Rule 26(g).

(c) Confidentiality Orders. A party by motion or with the agreement of all parties may submit to the court a proposed order governing the production and use of confidential documents and information in the pending action. The party or parties may (1) draft their own order or (2) utilize or customize a draft confidentiality order from an approved BCD form.

The entry of a confidentiality order by the court does not limit the court's power to make orders concerning the disclosure of documents produced in discovery, filed with the court, or presented at trial, including whether and under what circumstances the document will retain its confidential designation.

RULE 134. MOTION PRACTICE

(a) Motion Hearings. Unless otherwise ordered by the court, motions that do not require testimonial evidence shall be considered and decided by the court, without hearing or oral argument, based on the motion filings, the pleadings, admissible appropriate record evidence, the court's file, and memoranda.

(b) Summary Judgment Pre-filing Conference. Unless otherwise ordered by the court, any party proposing to move for summary judgment on any claim or issue shall notify the court of the intent to file the motion through electronic communication at least 14 days before the filing of the proposed motion. Electronic transmittal of the notification shall comply with the BCD Procedural Rules, except that Rule 139(a)(2) does not apply.

If a summary judgment pre-filing conference was not scheduled pursuant to Rule 132(b), the court may schedule an in person or telephonic conference of

counsel to discuss the proposed motion's parameters, including, but not limited to: the issue or claim to be addressed by the motion; the length of the statement of material facts and legal memoranda to be filed; possible stipulations to uncontested facts; the timing of the motion, opposition, and reply; and any other matter relevant to secure the just and speedy determination of the motion.

(c) Unopposed Motions for Enlargement of Deadlines. Unopposed motions pursuant to Rule 6(b)(1) that (a) do not expand the time for filing a jury trial demand or the completion of discovery, and (b) do not alter the dispositive motion deadline or the scheduled trial date, may be presented to the court electronically through a proposed order only. The proposed order shall state that all parties are aware of and do not oppose entry of the order. The presentation of an unopposed motion for the enlargement of deadlines does not mandate corresponding approval by the court.

Electronic transmittal of the order shall comply with the BCD Procedural Rules, except that Rule 139(a)(2) does not apply. Transmittal of the proposed order by an attorney or party constitutes a representation, subject to Rule 11, that all parties are aware of and do not oppose entry of the order.

RULE 135. JOINT FINAL PRETRIAL STATEMENT

(a) Conference of Parties. By a date established by the court, all parties shall confer for the purpose of discussing, agreeing upon, preparing, signing and filing a joint final pretrial statement in conformity with the requirements of this Rule. The filing of the joint final pretrial statement constitutes a representation to the court by all of the parties that they or their representatives at the meeting were fully vested to discuss and agree upon all of the matters set forth in Rule 135(b); they have in fact discussed and attempted in good faith to reach agreement on each of those matters; and the case is ready for trial.

(b) Joint Final Pretrial Statement. The joint final pretrial statement shall include the following, which will be considered by the court at the pretrial conference and may be incorporated into a pretrial order issued by the court:

- (1) stipulated facts;
- (2) all factual issues in dispute;

- (3) all legal issues;
- (4) all issues regarding the use of information or materials designated as confidential;
- (5) each party's list of exhibits;
- (6) each party's list of witnesses;
- (7) each party's list of experts;
- (8) depositions, or portions thereof, to be used in lieu of live testimony;
- (9) estimated length of trial;
- (10) subject matter of potential motions in limine;
- (11) proposed voir dire questions;
- (12) proposed jury instructions; and
- (13) proposed verdict form.

(c) Deadline for Filing Joint Final Pretrial Statement. The parties shall file the joint final pretrial statement by a date established by the court. The plaintiff shall have primary responsibility for coordinating the meeting between the parties and filing the joint final pretrial statement and related material. If the plaintiff is unable to timely comply with this requirement, plaintiff shall notify the court in writing of the reasons therefor and request a status conference.

RULE 136. PRETRIAL CONFERENCE

(a) Pretrial Conference. A pretrial conference shall be held on a date established by the court. At the pretrial conference, all parties must be prepared and authorized to discuss the following matters:

- (1) all matters contained in the joint final pretrial statement;
- (2) the formulation and simplification of the trial issues;

- (3) the elimination of unsupported claims or defenses;
- (4) the admission of facts and documents to avoid unnecessary proof;
- (5) stipulations to the authenticity of documents;
- (6) requests for advance rulings from the court on
 - (A) the admissibility of evidence; and
 - (B) the disposition of pending motions;
- (7) the establishment of time limits for presenting evidence and argument;
- (8) the estimated length of trial;
- (9) motions in limine;
- (10) settlement and the use of special procedures to assist in resolving the dispute; and
- (11) such other matters as may facilitate the just, speedy, and inexpensive disposition of the case.

(b) Mandatory Attendance. All unrepresented parties and all lead trial counsel and local counsel for each represented party must attend the pretrial conference in person unless the court authorizes attendance by other means.

RULE 137. TRIAL

(a) Trial Date. The trial shall commence on the date established in the scheduling order, unless otherwise ordered by the court.

(b) Trial Location. The trial will be held in the geographic area of the originating court unless (1) the court approves another location upon the agreement of the parties, or (2) the court determines that unusual circumstances, including scheduling requirements, warrant conducting the trial at another location.

(c) **Continuances.** Any request to continue a trial date must strictly comply with Rule 40. The court will not grant continuances based upon the unavailability of a witness in circumstances where the matter may be resolved by securing the agreement of the other parties or an order of the court concerning alternative methods for the presentation or admission of evidence. Because the purpose and goals of the BCD include providing predictable judicial action and promoting an effective and efficient process for resolving such disputes, continuances are disfavored and the granting of continuances shall be considered the exception and not the rule. The pendency of any motion shall not delay the start of trial.

RULE 138. ELECTRONIC COMMUNICATION

(a) **General Communication.** All electronic communication with the BCD shall be through electronic mail, directed to “Business.Court@courts.maine.gov”.

(b) **Case Communication.** Electronic mail sent to the BCD regarding a specific case should include only the case title and docket number in the subject line or heading. All communications with the BCD regarding a case shall be simultaneously copied to all other parties in the case.

Unless requested by the court or authorized by the BCD Procedural Rules, parties and counsel shall not copy the court on electronic communications between or among parties and counsel.

(c) **Counsel and Unrepresented Party Information Sheets.** After acceptance to the BCD, (1) each represented party shall complete and electronically return to the clerk a Counsel Information Sheet, and (2) each unrepresented party shall complete and return to the clerk an Unrepresented Party Information Sheet. Electronic communication will be sent to counsel at the address listed in the Maine Bar Directory until otherwise modified by the Counsel Information Sheet.

(d) **Electronic Mail Address.** Unless alternative service is approved pursuant to Rule 140(d), it is the responsibility of all counsel and unrepresented parties to (1) ensure that their correct electronic mail addresses are operational and on file with the BCD, (2) timely monitor their electronic mail service for electronic

service as provided in Rule 140, and (3) promptly notify the court of any change to their electronic mail addresses.

RULE 139. ELECTRONIC FILING

(a) Definition. “Electronic Filing” means the (1) electronic transmittal of a pleading or document to the BCD on or before 11:00 PM Eastern Standard Time of the filing deadline, and (2) a signed paper original of the pleading or document placed in the regular mail to the BCD on the same day that the electronic filing is made.

(b) Use. Electronic Filing is required in all BCD cases unless otherwise ordered or authorized by the court. Only compliance with both Rule 139(a)(1) and (2) shall constitute timely and sufficient filing.

Electronic transmittal of a pleading or document pursuant to Rule 139(a)(1) constitutes a representation, subject to Rule 11, that the attorney or party has placed a signed paper original of the pleading or document in the regular mail to the BCD on the same day of the electronic transmittal.

(c) Electronic Filing Format. Pleadings, or documents that are filed electronically shall be submitted as an attachment in portable document format (PDF) unless otherwise approved by the court. Electronic Filing must comply with the requirements of Rule 138.

(d) Simultaneous Electronic Service. Simultaneous Electronic Service, pursuant to Rule 140(c), upon a party of the pleading or document that is filed electronically shall be deemed sufficient service, except as otherwise ordered pursuant to Rule 140(d).

(e) Time Periods. Unless prohibited by court rule or statute, the day of the Electronic Filing shall not be included in calculating any time period prescribed by the BCD Procedural Rules or other Maine Rules of Civil Procedure for exercising any right, performing any duty, doing any act or making any response.

PROCEDURAL RULE 140. ELECTRONIC SERVICE

(a) Definition. “Electronic Service” means the electronic transmission of:

(1) A notice required or permitted to be given by the court to a party pursuant to the BCD Procedural Rules or other Maine Rules of Civil Procedure; or

(2) A pleading or document required to be served by one party upon another party pursuant to the BCD Procedural Rules or other Maine Rules of Civil Procedure.

Electronic Service is not allowed if the pleading or document is one for which personal service is required by Rule 5. Electronic Service does not include service of process or summons by any party to gain jurisdiction over persons or property.

(b) Electronic Service of Notices by the Court. Any notice required or permitted to be given by the court in any matter assigned to the BCD shall be served electronically on all attorneys representing parties and unrepresented parties, except as otherwise permitted by Rule 140(d).

Hardcopy versions of all notices served electronically by the court shall be maintained in the court file and available at the BCD Clerk's Office at 205 Newbury Street, Ground Floor, Portland, ME 04111.

(c) Electronic Service of Pleadings and Documents Among Parties. Any pleading or document required to be served by one party upon another party pursuant to the BCD Procedural Rules and other Maine Rules of Civil Procedure shall be served electronically, except as otherwise permitted by Rule 140(d) and provided that materials produced in discovery are not required to be produced or transmitted in electronic format.

(d) Alternative to Electronic Service. An attorney or unrepresented party who does not have and cannot acquire an electronic mail address may request that the court approve service in paper form pursuant to the Maine Rules of Civil Procedure or in such other manner as ordered by the court.

(e) Electronic Service Format. Notices, pleadings, or documents being transmitted electronically shall be sent or submitted as an attachment in portable document format (PDF) unless otherwise approved by the court. Electronic Service must comply with the requirements of Rule 138.

(f) Completion of Electronic Service. Electronic Service shall be complete when transmitted, presumed to have been received by the intended recipient, and shall have the same legal effect as an original paper document.

(g) Electronic Service Undeliverable. If service is made to the recipient's most current electronic mail address on file with the court and returned as undeliverable, service must then be made by regular mail; provided, however, that unless alternative service has been authorized pursuant to Rule 140(d), any time period countable from the completion of service of a Notice by the Court shall be based upon the attempted service of the electronic notice.

(h) Time Periods. Unless prohibited by court rule or statute, the day of the Electronic Service shall not be included in calculating any time period prescribed for exercising any right, performing any duty, doing any act or making any response, except that this provision shall not affect any date-certain deadline or deadlines prescribed in the notice and Rule 6(c) shall not apply.

2. Chapter XIV of the Maine Rules of Civil Procedure shall take effect on September 1, 2014.

Dated: June 19, 2014

FOR THE COURT¹

/S/

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

WARREN M. SILVER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

Associate Justices

¹ This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.