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

Effective: November 1, 2014

2014 Me. Rules 09

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

RULE 4. NOTICE; PROCESS

. . . .

(b) Issuance of Notice and Summons.

(1) *Probate Proceedings.*

(A) In informal probate proceedings, the notice shall be filled out by the register as provided in subparagraph (a)(1)(A) of this rule.

(B) In formal probate proceedings, the notice may be procured in blank from the register and filled out by the petitioner or the petitioner's attorney as provided in subparagraph (a)(1)(B) of this rule. Alternatively, if the notice is to be served by the register as provided in subparagraph (c)(1)~~(B)~~ of this rule, the notice shall be filled out by the register. If the notice is to be served personally, the attorney shall deliver to the person serving it the original notice upon which to make his return of service and a copy of the notice and petition for service. If the will is annexed to the petition, the copy of the petition to be served need not include the will.

(2) *Civil Proceedings.* In civil proceedings, the summons shall be filled out and delivered in the manner provided by Rule 4(b) of the Maine Rules of Civil Procedure.

(c) By Whom Served.

(1) *Probate Proceedings.*

~~(A) In informal probate proceedings, service shall be made by the register on behalf of the petitioner. The application shall contain a written request for such service accompanied by a tender of fees and a list of persons to be served and their addresses if known.~~

~~(B)~~ In ~~formal~~ all probate proceedings, service by mail ~~shall~~ may be made by the petitioner or the petitioner's attorney or by the register on the petitioner's behalf. Personal service shall be made by a sheriff or a deputy within the sheriff's county, or by a constable or other person authorized by law, or by some person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result. Service by publication shall be made by the register on behalf of the petitioner unless otherwise ordered by the court. When service by any method is to be made by the register, the petition shall contain a written request for such service, accompanied by a tender of fees and a list of persons to be served and their addresses if known.

(2) *Civil Proceedings.* In civil proceedings, service shall be made as provided in Rule 4(c) of the Maine Rules of Civil Procedure.

(d) Service of Notice and Summons.

(1) *Probate Proceedings.* In probate proceedings, the notice and, where appropriate, the petition shall be served together by one of the following methods:

(A) In informal probate proceedings, the notice shall be served upon all persons specified in sections 3-306 and 3-310 of the Probate Code by ordinary mail addressed to the recipient at the post office address given in the recipient's demand for notice, if any, or at the recipient's office or place of residence. Service by mail is complete upon mailing. Service shall also be made by publication as provided in subdivision (e) of this rule upon any of the specified persons whose address or

present whereabouts is unknown and cannot be ascertained by due diligence or, on request of the applicant, upon all unknown persons.

(B) In formal probate proceedings, except as otherwise provided by statute, the notice and petition shall be served by certified mail, with restricted delivery and return receipt requested, upon all persons upon whom service is required by statute, including any person who has made a demand for notice as provided in Rule 4D. The mailing shall be addressed to the recipient at the post office address given in the recipient's demand for notice, if any, or at the recipient's office or place of residence. Service by certified mail is complete when the mail is delivered and the receipt signed or when acceptance is refused or unclaimed, provided that the petitioner or register shall file either the return receipt or, if acceptance was refused or unclaimed, an affidavit that upon notice of such refusal or failure to claim a copy of the notice and petition was sent to the party being served by ordinary mail. Under this specific provision, regular mail is complete as of the date of the postmarked envelope and shall be included in the affidavit of service. Alternatively, the notice and petition may be served upon any of such persons personally, and shall be so served if statute requires, by any method provided in subdivisions (d) or (e) of Rule 4 of the Maine Rules of Civil Procedure for service of process in civil actions. Service shall also be made by publication as provided in subdivision (e) of this rule upon any such persons whose address or present whereabouts is unknown and cannot be ascertained by due diligence and, in any other proceeding on request of the petitioner, upon all unknown persons.

(C) If a party to be served is an infant, copies of the notice and the petition shall also be served by the appropriate method upon the infant's guardian, if the infant has one within the state known to the party making service and, if not, then upon the infant's father or mother or other person having the infant's care or control or with whom the infant resides. If service cannot be made upon any of them, then it shall be made as provided by order of the court.

(D) If a party to be served is an incompetent person copies of the notice and petition shall also be served by the appropriate method upon the guardian of the incompetent person or a competent adult member of the incompetent person's family with whom the incompetent person resides or, if the incompetent person is living in an institution, then upon the director or chief executive officer of the institution. If service cannot be made upon any of them, then it shall be made as provided by order of the court. The court may order that service not be made upon the incompetent person.

(E) The court on its own motion or for cause shown may order service to be made upon any party by a method other than those specified in this paragraph, so long as the method ordered is as calculated to give notice to the party as any other method reasonably available in all the circumstances.

(2) *Civil Proceedings.* In a civil proceeding the summons and complaint shall be served as provided in subdivisions (d), (e), and (f) of Rule 4 of the Maine Rules of Civil Procedure.

. . . .

Advisory Committee Note – October 2014

Rule 4(b)(1)(B) is amended to update a cross-reference to the new Rule 4(c)(1). Rule 4(c)(1) is amended to allow courts the discretion to assist parties in completing service of their filing and not be in contravention of the existing rules. Rule 4(d)(1)(B) is amended to codify the existing practice in the courts to calculate the date of completion for first class mail, after a certified letter is returned either refused or unclaimed by the recipient, as the date of the postmark on the envelope.

2. 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;

~~All notices furnished by the register, $1.00 for each notice;~~

Issuance of subpoena or summons, ~~$1.00~~ $5.00 each;

Certification and attestation of copies, ~~$3.00~~ $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;

~~Registration of trust, $ 10.00;~~

Filing a notice of domiciliary foreign conservator's appointment, ~~$5.00~~ $25.00;

Demand for notice, ~~$ 10.00~~ $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, ~~$1.00~~ $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, ~~$10.00~~ $25.00; and

Filing of petition or complaint in a civil proceeding, ~~$60.00~~ $120.00.

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

Advisory Committee Note – October 2014

Rule 54A is amended to update certain fees within the court and to create uniformity for filing fees throughout the entire Probate Court system.

3. Rule 84 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 84. FORMS

(a) Use of Official Forms. The forms listed in the Appendix of Forms are official forms. All persons involved in matters within the Probate Court's jurisdiction must use official forms. The official forms are intended to indicate the simplicity and brevity of statement which the rules contemplate and may serve as guides in cases for which no official form exists.

(b) Printing and Certification Requirements for Official Forms Not Purchased from the Register. Rule 5(i) of the Maine Rules of Civil Procedure governs proceedings in the Probate Courts, except that all official forms shall be printed in accordance with the following standards:

Official Probate Court forms are to be printed in a uniform format and type approved by the Maine Association of Registers of Probate ~~and utilizing 20 lbs. acid-free natural-white 25% cotton fiber paper or better and 600 dot per inch black laser printer or better~~. Any official form not purchased from the Register shall include, at the time of filing, a written certification by the preparer of the form that no alteration has been made to the official form as most recently approved and promulgated by the Supreme Judicial Court, which certification must appear on the form immediately following the last line of the form.

(c) Fees for Official Forms. Fees for official forms shall be set by the Registers of Probate in accordance with Title 18-A, Section 1-511. The fee will be charged at the time an official form is purchased from the Register. If the official form is prepared in accordance with paragraph (b) of this rule, the fee will be charged at the time the official form is presented to the Register for filing.

(d) Electronically Filed Forms. No fee shall be charged for an electronically filed form.

Advisory Committee Note – October 2014

Rule 84(b) is amended to remove the specific requirement of any forms filed with the court to be of a certain quality of paper for the archiving of probate documents. With the move towards electronic filing and the ability for the courts to digitally store all documents filed with each court, the necessity of such rigorous paper standards is no longer necessary. Rule 84(d) is added to establish that no fee shall be charged for an electronically filed form.

4. Rule 92.2 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.2. DEFINITIONS

(a) Document. A "Document" is a writing or other paper filed or served under the Electronic Filing System that is stored in an electronic or other medium and is retrievable.

(b) Electronic Case File. An "Electronic Case File" is an assemblage of the items pertaining to a single case or matter under a single docket number electronically stored by the Probate Court.

(c) Electronic Filing System. The "Electronic Filing System" is that system approved by the Maine Supreme Judicial Court for filing and service of pleadings, motions and other documents via the Internet through the Probate Court authorized service provider.

(d) Electronic Filing. "Electronic Filing" is the process of transmitting a document from a Registered Filer's computer, using the court's Internet-based electronic filing system, to file the document in the court's Electronic Case File.

(e) Electronic Service. "Electronic Service" is the transmission of documents to any party in a case via the Electronic-Filing System. Registered Filers have agreed to receive service via the Electronic-Filing System.

(f) Electronic Means. "Electronic means" is any method of direct electronic transmission of a document from the sender's computer or electronic filing system to the recipient's computer or electronic filing system.

(g) Nonelectronic Case File. A "Nonelectronic Case File" is an assemblage of the items pertaining to a single case or matter under a single docket number physically stored by the court.

(h) Nonelectronic Means. "Nonelectronic means" is any method of transmitting a document or filing or service by any means other than by direct electronic transmission from the sender's computer or electronic filing system to the recipient's computer or electronic filing system.

(i) Filer. A "Filer" is a petitioner, movant, applicant, plaintiff, or interested person as defined under 18-A M.R.S.A. §1-201(20).

(j) Registered Filer. A "Registered Filer" is any person who is permitted or required under Rule 92.3 to file documents electronically, or a self-represented party who elects or is ordered under Rule 92.3(c)(3) to file electronically and has registered through the electronic filing system website as provided in Rule 92.4. The term includes any other person authorized to file documents electronically under Rule 92.4.

(k) S/Name. An "S/Name" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the electronically-filed or electronically-served documents.

~~**(l) Emeritus Attorney.** An "Emeritus Attorney" is an attorney who has practiced for 40 years or more, attained the age of 65 years, and is engaged in less than the full-time practice of law.~~

Advisory Committee Note – October 2014

E-filing permits filing of legal papers by electronic means. Rule 92.2 recognizes that the terminology used in e-filing is not presently used in the Probate Courts and contains the definitions for the terms used in e-filing. Under the original E-filing Rules, there was an exception under Rule 92.3(b)(2) to exempt Emeritus Attorneys from these Rules. That exception has been removed.

5. Rule 92.3(b) of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.3. WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

. . . .

(b) Exceptions to electronic filing. Nonelectronic filing may occur as follows:

(1) A self-represented party who is not a Registered Filer may file nonelectronically.

~~(2) An Emeritus Attorney may file nonelectronically.~~

~~(3)~~ (2) A filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing unfeasible.

~~(4)~~ (3) Nonelectronic filing of a particular document or information is permitted by the court to protect confidentiality or for other good cause.

~~(5)~~ (4) Nonelectronic filing is permitted when expressly permitted by these rules or an applicable rule of procedure.

~~(6)~~ (5) Nonelectronic filing is permitted in a case commenced prior to the mandatory filing date in the applicable county unless the court orders that documents filed on or after the mandatory electronic filing date in that case be filed electronically.

~~(7)~~ (6) Nonelectronic filing is permitted when a document cannot reasonably be scanned and filed electronically because of its dimensions, shape, or condition.

Advisory Committee Note – October 2014

Rule 92.3(b) enumerates exceptions to the electronic filing requirement. The exception for an emeritus attorney was removed.

6. Rule 92.4(b) of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.4. REGISTERED FILERS

. . . .

(b) Method of registration by attorneys and self-represented parties. An attorney in good standing in the State of Maine, any other person who is permitted to file documents electronically, or a self-represented party who elects to do so, may register on the electronic filing system website by submitting all information required by the Probate Court on the registration screens displayed on the website, including: (1) his or her mailing address; (2) his or her Bar number; (3) his or her

billing information; and (4) up to three e-mail addresses, one of which is an e-mail account currently maintained by the attorney. The addresses provided shall be listed on the probate website~~, must be listed on all filings by that attorney~~ and are the addresses to which all service, notice, or other communication submitted must be sent. Once an attorney has become a Registered Filer pursuant to this subdivision in any matter, he or she shall remain a Registered Filer for all matters in the Probate Court until he or she terminates his or her registration pursuant to Rule 92.4(h).

Advisory Committee Note – October 2014

The requirement that attorneys must list their addresses on all filings was deemed unnecessary as that information is already available on the website for all registered filers.

7. Rule 92.5(e) of the Maine Rules of Probate Procedure is amended to read as follows:

(e) Review by court staff. A filing that has not been automatically rejected will be reviewed by court staff for compliance, and court staff will then electronically notify the filer either that the filing has been accepted or that it cannot be accepted until specified actions required under those rules have been taken. A filer may submit a corrected filing within seven calendar days after receiving the notification. Failure to submit a corrected filing on a timely basis shall constitute a rejected filing. Court staff will accept a corrected filing if all requirements of those rules have been met. When an original or corrected filing has been accepted, or when a court-generated document is filed, the date and time of filing for all purposes under the applicable rules of procedure are the date and time that the original filing was submitted. Court staff will provide a docket number for a new filing that has been accepted in the acceptance notification. The assigned docket number must appear on all subsequent filings pertaining to the case.

Advisory Committee Note – October 2014

Rule 92.5(e) is amended to clarify that if a filer does not correct its filing within seven calendar days, then the filing will automatically be deemed rejected by court staff.

8. Rule 92.8 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.8. SIGNATURES

(a) ~~Forms and~~ Effect of Signature. The following screen shall appear on the Maine Probate.Net website prior to any electronic submission to the court that requires a signature:

"By typing your name below preceded by 'S/' you are representing that:

"1) You are the Registered Filer or are permitted by the Registered Filer or the Court to access the Registered Filer's account;

"2) Each document you are submitting to the Court today has been signed by electronic means or in hand by the person whose name appears in the signature block of the document, you have possession of the document, and agree to retain a paper or electronic copy of the document available for inspection by the signer or the Court until the longer of two years or final disposition of the matter, including the disposition of all appeals or the running of the time for appeal."

(b) Form of Signature.

(1) ~~The electronic filing of a pleading, motion, or other procedural document by a Registered Filer constitutes the filer's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions.~~ An electronically filed pleading, motion or other procedural document must include either a signature block containing the ~~filer's~~ Filer's typed-in name preceded by "S/" ~~and the filer's name, address, telephone number, and e-mail addresses~~ or a scanned image of the actual signer's signature.

(2) A procedural document filed by nonelectronic means, when permitted under Rule 92.3(b) or otherwise required by these rules, must be signed as provided in the applicable rules of procedure.

~~**(b) Multiple Signatures.**~~

~~(1)~~ (3) A pleading, motion or other procedural document filed ~~jointly~~ by a Registered Filer and other parties or counsel aligned in interest with the filer must

contain the signature of the filer and the other parties or counsel in the form provided in ~~(a)~~ (b)(1) or (2). If a document is filed electronically, the ~~filer's~~ Filer's signature constitutes a representation that all the other signers consented to the filing of the document.

~~(2) The filer of any document containing the signatures of other persons must retain a paper or electronic copy of the document available for inspection by the signers or the court until the longer of two years or final disposition of the matter, including the disposition of all appeals or the running of the time for appeal.~~

(c) Documents under Oath. If a notarized, acknowledged, or verified document or a document signed under oath is to be filed electronically under these rules, the original, signed and attested as provided in the applicable rules of procedure or other provisions of law, must be scanned and filed in accordance with Rule 92.7 by the filer. ~~The filer must retain the original of the document available for inspection by the signers or the court until the longer of two years from the date of filing or final disposition of the matter, including the disposition of all appeals or the running of the time for appeal.~~

(d) Retention of Documents. The filer of any document containing the signatures of other persons must retain a paper or electronic copy of the document available for inspection by the signers or the court until the longer of two years or final disposition of the matter, including the disposition of all appeals or the running of the time for appeal.

~~(d)~~ **(e) Signatures of Court Personnel.** Judges, and other court personnel authorized to sign on behalf of a judge or in their own capacity, may electronically sign any court-generated document that requires a signature with an electronic facsimile signature or scanned copy, or another form of electronic signature as defined in the Maine Digital Signature Act, 10 M.R.S. §§ 9501-9507 [2010].

Advisory Committee Note – October 2014

Rule 92.8(a)(1) is amended to integrate the exact language utilized on the splash screen on the Maine Probate e-filing website to explain the form and effect of electronic signatures. Former section (b)(1) has been renumbered to (a)(3) and the word "jointly" removed to provide clarification on the effect of e-signatures. Former section (b)(2) has been relettered as "new" section (c). Former section (c)

has been relettered as "new" section (b) and deletes the requirement that the filer retain the original paper document for two years, provided an electronic copy has been retained for the two year period. Section (d) regarding the retention of documents is added as a new section. Former section (d) is relettered as "new" section (e).

9. Rule 92.9 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.9. PAYMENT OF FEES AND COSTS

(a) Fees required. No electronically or nonelectronically filed document will be accepted under Rule 92.5 or 92.6 until any and all fees and costs attributable to the filing are paid.

(b) Method of payment; waiver of fees. Fees and costs for electronically filed documents may be paid electronically when filed, or may be paid directly over the counter at the office of the clerk by cash, check, or money order. ~~Fees and costs for nonelectronically filed documents must be paid by cash, check, or money order.~~ A person who wishes to proceed in forma pauperis must comply with the provisions of the applicable rules of procedure.

Advisory Committee Note – October 2014

Rule 92.9(b) is amended to allow the courts to accept electronic payments (e.g. PayPal, electronic funds transfer (EFT), automated clearing house (ACH), and approved credit card) for any and all types of filings.

10. Rule 92.12(a) of the Maine Rules of Probate Procedure is amended to read as follows:

(a) Private records. "Private Records" means (1) all records and documents (electronic or nonelectronic) relating to an adoption proceeding; (2) Certificates of Value (Probate Form DE-401A); (3) Physicians' and Psychologists' Reports (Probate Form PP-505); and (4) any record or document designated as a Private Record by the Probate Court.

Advisory Committee Note – October 2014

Rule 92.12(a) is amended to include the numbering of PP-505 forms as (3) under "Private Records."

Dated: October 7, 2014

FOR THE COURT[1]

LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
Associate Justices

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