

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

2015 Me. Rules 11

Effective: September 1, 2015

All of the Justices concurring therein, the following amendment to the Maine Rules of Unified Criminal Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the 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 25 of the Maine Rules of Unified Criminal Procedure is deleted and replaced with the following:

RULE 25. INABILITY OF A JUDGE* TO PROCEED; RECUSAL

(a) Inability to Proceed. If by reason of death, resignation, removal, sickness, or other disability, a judge before whom a defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge assigned thereto by the Chief Justice of the Superior Court or the Chief Judge of the District Court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because the judge did not preside at the trial or for any other reason, the judge may in the exercise of discretion grant a new trial.

(b) Recusal.

Recusal means the withdrawal of a judge from any involvement in a case. It is sometimes referred to as “disqualification.”

(1) *On the Court’s Initiative.* A judge may recuse on the justice’s or judge’s own initiative if the judge determines that recusal is appropriate pursuant to the Code of Judicial Conduct.

* As used in this rule, “judge” refers to a judge of the District Court, a justice of the Superior Court, or a justice of the Supreme Judicial Court.

(2) *On the Motion of a Party.* A party may move for a judge to recuse if the party has a good faith basis for requesting recusal. The grounds for requesting a recusal are stated in the Code of Judicial Conduct.

(A) *Assertion of Grounds for Recusal and Affidavit Requirement.* When a party moves for a judge to recuse, the party must include in the motion an assertion of the factual grounds supporting recusal and file with the motion one or more affidavits demonstrating an evidentiary basis for those facts.

(B) *Determination of Recusal by the Court.* With or without a hearing, a judge may determine herself or himself to be recused. If the judge recuses in the matter, the judge may, but is not required to, set forth the reasons for recusing.

(C) *Denial of Motion to Recuse.* If a judge denies a motion to recuse, the judge shall briefly state the reasons for the denial in a written order, or orally on the record if the motion is made during the course of a proceeding that is being recorded, provided, however, that if a motion to recuse is made during or shortly before the start of an on-the-record proceeding, and the judge denies the motion, the judge need not state the reasons for denial of the motion until after the proceeding has been completed and the judge, or a jury, has issued any order or other ruling to conclude the proceeding.

(3) *Effect of Recusal.* Upon determining herself or himself to be recused, the judge shall not further participate in the proceeding unless her or his recusal is waived by the parties as provided in subdivision (c) below.

(c) Waiver of Recusal by the Parties.

(1) A judge who determines herself or himself to be recused may, after disclosing the basis for her or his recusal on the written or recorded record, ask the parties and their attorneys whether they wish to waive the recusal, except where the basis for recusal is as provided in paragraph (2) below. A waiver of recusal shall recite the basis for the recusal and shall be effective only when signed by all parties and their attorneys and filed in the record.

(2) There shall be no waiver of recusal if the basis therefor is any of the following:

(A) The judge has announced a personal bias or prejudice concerning a party;

(B) The judge has more than a de minimis pecuniary interest in the subject of the litigation;

(C) The judge served as an attorney in the matter in controversy; or

(D) The judge has been a material witness concerning the matter in controversy.

(3) If grounds for recusal are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the recusal is waived, recuse herself or himself, but in the absence of good cause, the rulings she or he has made up to that time shall not be set aside by the judge who replaces the recused judge.

(d) Appeal. A judicial ruling denying a motion to recuse may be appealed in the ordinary course. Such a ruling is not an immediately appealable order and may be reviewed by appeal only after the entry of a final judgment.

Advisory Note – July 2015

The purpose of this amendment is to clarify for parties to proceedings and other interested persons the process to be followed when a judge is unable to proceed or when a question of disqualification or recusal arises. Subdivision (a) is the current Rule 25, unchanged other than the addition of a comma in the first sentence after the word “guilt” and before the word “any.” Subdivisions (b), (c), and (d) address the process to be followed when there is a question of recusal or disqualification of the judge. The standards for recusal or disqualification are set forth in the Maine Code of Judicial Conduct at Rules 2.11 and 3.11 (effective September 1, 2015). The recusal provisions of Rule 25(b), (c), and (d) are identical to the recusal provisions of Rule 63(b), (c), and (d) of the Maine Rules of Civil Procedure (effective September 1, 2015).

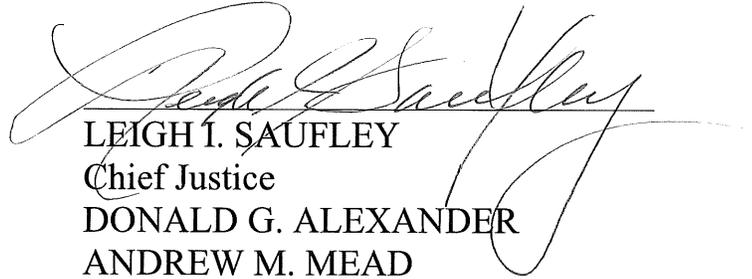
Rules 2.11 and 3.11 of the Maine Code of Judicial Conduct and the Advisory Notes to those Rules provide guidance for application of the revised Rule 25 and should be consulted when questions arise regarding disqualification and recusal issues.

Finally, the semicolon in the heading to current Rule 25 is designed to emphasize that “inability to proceed” and “recused” address distinct matters.

2. This amendment to the Maine Rules of Unified Criminal Procedure shall be effective September 1, 2015.

Dated: July 14, 2015

FOR THE COURT*



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