

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENTS TO
MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

2017 Me. Rules __

1. Rule 44, subdivision (d) of the Maine Rules of Unified Criminal Procedure is adopted to read as follows:

(d) Appearance of defense counsel. An order assigning counsel to represent a defendant pursuant to subdivision (a) shall constitute a notice of appearance by that attorney. Counsel who represents a defendant in a criminal proceeding other than on a court-appointed basis shall file a written appearance with the clerk of the Unified Criminal Docket before or at the time of counsel's first court appearance or filing of papers on behalf of the client. The entry of appearance must include the attorney's name, firm name, address, telephone number, facsimile number, email address, and bar number.

Advisory Note - _____ 2017

Rule 44, subdivision (d) is adopted to identify the circumstances requiring defense counsel to file a written notice of appearance with the clerk of the Unified Criminal Docket, when that notice is required to be filed, and what information that notice must contain.

2. Rule 44B of the Maine Rules of Unified Criminal Procedure is amended to read as follows:

RULE 44B. WITHDRAWAL OF COUNSEL

Counsel may withdraw from a case by serving notice of withdrawal on his or her client and the State and filing the notice, provided that such notice is accompanied by notice of the appearance of other counsel. Unless this condition is met, counsel may withdraw from the case only by leave of court. A court order relieving appointed counsel does not become effective until either new counsel is appointed or the court determines that the defendant formally waives has expressly waived the right to appointed counsel, impliedly waived that right by conduct, or forfeited that right.

Advisory Note - _____ 2017

Rule 44B is amended to include two additional ways in which a court order relieving appointed counsel would become effective. *See State v. Nisbet*, 2016 ME 36, 134 A.3d 840.

3. Rule 46, subdivisions (g) and (h) of the Maine Rules of Unified Criminal Procedure are amended to read as follows:

(g) Forfeiture.

(1) *Declaration.* If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail and give ~~prompt~~ notice to the ~~obligors~~ defendant and the person who has agreed to act as surety or deposited cash bail.

(2) *Setting Aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When no motion to set aside a forfeiture has been made within ~~35~~ 28 days of notice of the declaration of forfeiture, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond the ~~obligors~~ defendant and the person who has agreed to act as surety or deposited cash bail submit to the jurisdiction of the court and their liability may be enforced on motion without the necessity of an independent action.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(h) Exoneration. When the condition of the bond has been satisfied, the court shall exonerate the ~~obligors~~ defendant and the person who has agreed to act as surety or deposited cash bail and release any bail.

Advisory Note - _____ 2017

The amendment makes the following changes to Rule 46(g) and (h).

First, in subdivision (g), paragraph (1) the word “prompt” is deleted as unnecessary in light of the first sentence of paragraph (3).

Second, in subdivision (g), paragraphs (1) and (3) and subdivision (h) the word “obligors” is replaced in favor of identifying with specificity those to whom “obligors” potentially refers—namely, the defendant and the person who has agreed to act as surety or deposited cash bail.

Third, in subdivision (g), paragraph (3), first sentence, the current period within which a motion to set aside a forfeiture can be filed before a court enters a judgment of default is shortened from 35 days to 28 days. A 28-day period is sufficient, since the time period starts only after notice of the declaration of forfeiture has been provided.

4. Rule 54, subdivision (b) of the Maine Rules of Unified Criminal Procedure is amended to read as follows:

(b) Clerk’s Office. ~~The Clerk’s office of the clerk of the Unified Criminal Docket with the clerk or a deputy in attendance shall be open during such hours as the Chief Justice of the Superior Court or the Chief Judge of the District Court may designate on all days except Saturdays, Sundays, and legal holidays, and except such other days as the Chief Justice of the Superior Court or the Chief Judge of the District~~ Supreme Judicial Court may designate. The hours of operation shall be designated by the Chief Justice of the Supreme Judicial Court by way of administrative order.

Advisory Note – _____ 2017

The amendment makes the following changes to Rule 54(b).

First, the initial reference to the “Clerk’s office” in its substance is modified to refer specifically to the “office of the clerk of the Unified Criminal Docket” for clarity.

Second, the Chief Justice of the Supreme Judicial Court is substituted for “the Chief Justice of the Superior Court or Chief Judge of the District Court” regarding the designating of days, other than Saturdays, Sundays and legal holidays, that the clerk’s office may be closed.

Third, the Chief Justice of the Supreme Judicial Court is similarly substituted regarding the designating of hours of operation of the clerk's office. In this latter circumstance, as is currently the practice as an exercise of supervision pursuant to 4 M.R.S. §§ 101-A and 164, the Chief Justice opts to address the hours of operation by way of administrative order. See Hours of Operation, Me. Admin. Order JB-05-4 (as amended by A. 9-16) (effective Sept. 6, 2016).