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# THE MAINE RULES OF CIVIL PROCEDURE

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# MAINE RULES OF CIVIL PROCEDURE

## I. SCOPE OF RULES - ONE FORM OF ACTION

### RULE 1. SCOPE OF RULES

These rules govern the procedure in the District Court, in the Superior Court, and before a single justice of the Supreme Judicial Court in all suits of a civil nature whether cognizable as cases at law or in equity, including appeals from a governmental agency, with the limitations stated in Rule 81. These rules also govern the procedure in the Supreme Judicial Court when sitting as the Law Court. They shall be construed to secure the just, speedy and inexpensive determination of every action.

### RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

## II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

### RULE 3. COMMENCEMENT OF ACTION

Except as otherwise provided in these rules, a civil action is commenced (1) by the service of a summons and complaint, or (2) by filing a complaint with the court. When method (1) is used, the complaint must be filed with the court within 20 days after completion of service. When method (2) is used, the return of service shall be filed with the court within 90 days after the filing of the complaint. If the complaint or the return of service is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.

## RULE 4. PROCESS

(a) Summons: Form. The summons shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(b) Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

(c) Service. Service of the summons and complaint may be made as follows:

(1) By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service of the summons and complaint shall be made under paragraph (2) or (3) of this subdivision.

(2) By a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by some person specially appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this rule or by statute.

(d) Summons: Personal Service. The summons and complaint shall be served together. Personal service within the state shall be made as follows:

(1) Upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by publication pursuant to subdivision (g) of this rule, if the court deems publication to be more effective.

(2) Upon a minor, by delivering a copy of the summons and of the complaint personally (a) to the minor and (b) also to the minor's guardian if the minor has one within the state, known to the plaintiff, and if not, then to the minor's father or mother or other person having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally (a) to 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 to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court and (b) unless the court otherwise orders, also to the incompetent person.

(4) Upon a county, by delivering a copy of the summons and of the complaint to one of the county commissioners or their clerk or the county treasurer.

(5) Upon a town, by delivering a copy of the summons and of the complaint to the clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons and of the complaint to the clerk, treasurer, or manager.

(7) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district of Maine or to an

assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the United States District Court for the district of Maine and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given.

Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this rule.

Upon any other public corporation, by delivering a copy of the summons and of the complaint to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a domestic private corporation (a) by delivering a copy of the summons and of the complaint to any officer, director or general agent; or, if no such officer or agent be found, to any person in the actual employment of the corporation; or, if no such person be found, to the Secretary of State, provided that the plaintiff's attorney shall also send a copy of the summons and of the complaint to the corporation by registered or certified mail, addressed to the corporation's principal office as reported on its latest annual return; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a corporation established under the laws of any other state or country (a) by delivering a copy of the summons and of the complaint to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(10) Upon a partnership subject to suit in the partnership name in any action, and upon all partners whether within or without the state in any action on a claim arising out of partnership business, (a) by delivering a copy of the summons and of the complaint to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership within the state; or (b) by delivering a copy of the summons and of the complaint to any agent, attorney in fact, or other person authorized by appointment or by statute to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(11) Upon the State of Maine by delivering a copy of the summons and of the complaint to the Attorney General of the State of Maine or one of the Attorney General's deputies, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action attacking the validity of an order of an officer or agency of the State of Maine not made a party, by also sending a copy of the summons and of the complaint by ordinary mail to such officer or agency. The provisions of Rule 4(f) relating to completion of service by mail shall here apply as appropriate.

(12) Upon an officer or agency of the State of Maine by the method prescribed by either paragraph (1) or (7) of this subdivision as appropriate, and by also sending a copy of the summons and of the complaint by ordinary mail to the Attorney General of the State of Maine.

(13) Upon all trustees of an express trust, whether within or without the state, in any action on a claim for relief against the trust, except an action by a beneficiary in that capacity, (a) by delivering a copy of the summons and of the complaint to any trustee, or by leaving such copies at an office or place of business of the trust within the state; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the trust, provided that any further notice required by the statute shall also be given.

(14) Upon another state of the United States, by the method prescribed by the law of that state for service of process upon it.

(e) Personal Service Outside State. A person who is subject to the jurisdiction of the courts of the state may be served with the summons and complaint outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the

place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the state.

(f) Service by Mail in Certain Actions.

(1) Outside State. Where service cannot, with due diligence, be made personally within the state, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases: where the pleading demands a judgment that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state, or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to any property.

(2) Divorce Cases. Service of the summons and complaint or a post-judgment motion may be made in an action pursuant to Chapter XIII of these Rules upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person, whether in or outside the state, by registered or certified mail, with restricted delivery and return receipt requested.

(3) Service Completion. Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary mail.

(g) Service by Publication.

(1) *When Service May Be Made.* The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service by publication in an action described in subdivision (f) of this rule, unless a statute provides another method of notice, or when the person to be served is one described in subdivision (e) of this rule.

(2) *Contents of Order.* An order for service by publication shall include (i) a brief statement of the object of the action; (ii) if the action may affect

any property or credits of the defendant described in subdivision (f) of this rule, a description of any such property or credits; and (iii) the substance of the summons prescribed by subdivision (a) of this rule. The order shall also direct its publication once a week for 3 successive weeks in a designated newspaper of general circulation in the county where the action is pending; and the order shall also direct the mailing to the defendant, if the defendant's address is known, of a copy of the order as published.

(3) *Time of Publication; When Service Complete.* The first publication of the summons shall be made within 20 days after the order is granted. Service by publication is complete on the twenty-first day after the first publication. The plaintiff shall file with the court an affidavit that publication has been made.

(h) Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c)(1) of this rule, return shall be made by the plaintiff's attorney filing with the court the acknowledgment received pursuant to that paragraph. The attorney's filing of such proof of service with the court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a sheriff or the sheriff's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When service is to be effected upon a party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that

country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (h) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

## RULE 4A. ATTACHMENT

(a) Availability of Attachment. In any action under these rules, real estate, goods and chattels and other property may, in the manner and to the extent provided by law, but subject to the requirements of this rule, be attached and held to satisfy the judgment for damages and costs which the plaintiff may recover. Attachment under this rule shall not be available before judgment in any action against a consumer for a debt arising from a consumer credit transaction as defined in the Maine Consumer Credit Code.

(b) Writ of Attachment: Form. The writ of attachment shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court, the names and residences of the parties and the date of the complaint, be directed to the sheriffs of the several counties or their deputies, and command them to attach the goods or estate of the defendant to the value of a specified amount ordered by the court, or to attach specific property of the defendant designated by the court, and to make due return of the writ with their doings thereon. The writ of attachment shall also state the name of the justice or judge who entered the order approving attachment of property, if any, and the date thereof.

(c) Same: Service. The writ of attachment may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The writ of attachment shall be served by a sheriff or a deputy within the sheriff's county. The plaintiff's attorney shall deliver to the officer making the attachment the original writ of attachment upon which to make return and a copy thereof.

No property may be attached unless such attachment for a specified amount is approved by order of the court. Except as provided in subdivision (g) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that it is more likely than not that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the aggregate sum of the attachment and any liability insurance, bond, or other security, and any property or credits attached by other writ of attachment or by trustee process shown by the defendant to be available to satisfy the judgment.

An attachment of property shall be sought by filing with the complaint a motion for approval of the attachment. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (i) of this rule. Except as provided in subdivision (g) of this rule, the motion and affidavit or affidavits with the notice of hearing thereon shall be served upon the defendant in the manner provided by Rule 4 at the same time the summons and complaint are served upon that defendant. In the case of an attachment approved ex parte as provided in subdivision (g) of this rule, the defendant shall also be served with a copy of the writ of attachment with the officer's endorsement thereon of the date or dates of execution of the attachment or, if attachment has been perfected by filing under 14 M.R.S.A. § 4154, with a copy of the order of approval with the acknowledgment of the officer receiving the filing endorsed thereon.

A defendant opposing a motion for approval of attachment shall file material in opposition as required by Rule 7(c). If the defendant is deemed to have waived all objection to the motion as provided in Rule 7(c) for failure to file opposition material within the time therein provided or as extended, the court shall, without hearing, upon a finding that the plaintiff is entitled to an attachment under the terms of this subdivision (c), enter an order of approval of attachment in an appropriate amount.

Any attachment shall be made within 30 days after the order approving the writ of attachment. When attachments are made subsequent to service of the

summons and complaint upon the defendant, a copy of the writ of attachment with the officer's endorsement thereon of the date or dates of the attachments shall be promptly served upon the defendant in the manner provided by Rule 5. When an attachment made subsequent to the service of the summons and complaint has been perfected by filing under 14 M.R.S.A. § 4154, a copy of the order of approval, with the acknowledgment of the officer receiving the filing endorsed thereon, shall be promptly served upon the defendant in the same manner.

(d) Approval of Limited Attachment or Substituted Security.

(1) *Attachment of Specific Property.* In the order approving an attachment, the court shall specify that the attachment is to issue solely against particular property or credits upon a showing by the defendant (A) that the property or credits specified are available for attachment and would, if sold to satisfy any judgment obtained in the action, yield to the plaintiff an amount at least equal to the amount for which attachment is approved in accordance with the criteria of subdivision (c), and (B) that the absence of such a limitation will result in hardship to the defendant.

(2) *Alternative Security for a Single Defendant.* At the hearing on a motion for approval of an attachment against the property of a single defendant, the defendant may tender cash or bond at least equal to the amount of any attachment to be approved in accordance with the criteria of subdivision (c). If the court finds that the defendant has tendered cash in sufficient amount, it shall order that amount to be deposited with the court as provided in Rule 67 to be held as security for any judgment that the plaintiff may recover. If the court finds that the defendant has tendered a bond of sufficient amount and duration and with sufficient sureties, the court shall order the bond to be filed with the court. A surety upon a bond filed under this rule is subject to the terms and conditions of Rule 65(c). Upon such deposit or filing, the court shall further order that any prior attachment against the defendant to satisfy a judgment on the claim for which security has been tendered shall be dissolved. Thereafter, no further attachment shall issue against the defendant except on motion of the plaintiff and a showing that the cash deposited or bond filed has become inadequate or unavailable to satisfy the judgment.

(3) *Single Security for Multiple Defendants.* At the hearing for approval of attachment against the property of two or more defendants alleged to be jointly and severally liable to the plaintiff, one or more of the defendants may tender cash or bond sufficient, in the aggregate, to satisfy the total amount the

plaintiff would be entitled to recover upon execution against all such defendants. Upon the findings required by paragraph (2) of this subdivision for a single defendant, the court may order the cash to be deposited or the bond filed with the court on the same conditions and with the same effect provided in that paragraph.

(e) Attachment on Counterclaim, Cross-Claim or Third-Party Complaint. An attachment may be made by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim.

(f) Subsequent or Additional Attachment. If no writ of attachment has issued, or if the time period prescribed in subdivision (c) of this rule for making attachments has expired, the court on motion may issue an order of approval for attachment of real estate, goods and chattels or other property. The provisions of subdivisions (c), (d), and (g) of this rule apply to the motion and any attachment ordered thereunder, except that notice if appropriate shall be served upon the defendant in the manner provided in Rule 5.

(g) Ex Parte Hearings on Attachments. An order approving attachment of property for a specific amount may be entered ex parte only in an action commenced by filing the complaint with the court together with a motion for approval of the attachment as provided in subdivision (c) of this rule. The hearing on the motion shall be held forthwith. Such order shall issue if the court finds that it is more likely than not that the plaintiff will recover judgment in an amount equal to or greater than the aggregate sum of the attachment and any insurance, bond, or other security, and any property or credits attached by other writ of attachment or by trustee process known or reasonably believed to be available to satisfy the judgment, and that either (i) there is a clear danger that the defendant if notified in advance of attachment of the property will remove it from the state or will conceal it or will otherwise make it unavailable to satisfy a judgment, or (ii) there is immediate danger that the defendant will damage or destroy the property to be attached. The motion for such ex parte order shall be accompanied by a certificate by the plaintiff's attorney of the amount of any insurance, bond, or other security, and any other attachment or trustee process which the attorney knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of Rule 11, shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (i) of this rule.

(h) Dissolution or Modification of Attachments. On 2 days' notice to the plaintiff or on such shorter notice as the court may prescribe, any person having an

interest in property that has been attached pursuant to an ex parte order entered under subdivision (g) of this rule may appear, without thereby submitting to the personal jurisdiction of the court, and move the dissolution or modification of the attachment, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order that the moving party has challenged by affidavit.

Upon motion and notice and a showing by any defendant that specific property or sufficient cash or bond is available to satisfy a judgment as provided in subdivision (d) of this rule, the court may modify an order of attachment, whether issued ex parte or after hearing, to limit the attachment to particular property or to order cash or bond to be held by the court as security for the judgment, and to dissolve the prior attachment as to all other property of the defendant. If a prior attachment has been perfected as to property specified in the modified order, the modified order shall relate back to the original attachment.

Nothing herein shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law.

(i) Requirements for Affidavits. Affidavits required by this rule shall set forth specific facts sufficient to warrant the required findings and shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true.

## RULE 4B. TRUSTEE PROCESS

(a) Availability of Trustee Process. In any personal action under these rules except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking, or for assault and battery, trustee process may be used, in the manner and to the extent provided by law, but subject to the requirements of this rule, for the purpose of securing satisfaction of the judgment for damages and costs which the plaintiff may recover, provided, however, that no person shall be adjudged trustee for any amount due from that person to the defendant for earnings. The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commissions, bonuses or otherwise, and includes periodic payments pursuant to a pension or retirement program. Trustee process under this rule shall not be

available before judgment in any action against a consumer for a debt arising from a consumer credit transaction as defined by Maine Consumer Credit Code.

(b) Summons to Trustee: Form. The summons to a trustee shall bear the signature or facsimile signature of the clerk, be under the seal of the court and contain the name of the court and the names of the parties, be directed to the trustee, state the name and address of the plaintiff's attorney, a specified amount for which the goods or credits of the defendant are attached on trustee process or specific goods or credits designated by the court for attachment, and the time within which these rule require the trustee to make disclosure, and shall notify the trustee that in case of failure to do so the trustee will be defaulted and adjudged trustee as alleged. The trustee summons shall also state the name of the justice or judge who entered the order approving attachment on trustee process and the date thereof.

(c) Same: Service. The trustee summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The trustee summons shall be served by a sheriff or a deputy within the sheriff's county. The plaintiff's attorney shall deliver to the officer making service the original trustee summons upon which to make return of service and a copy thereof for service upon the trustee. The trustee summons shall be served in like manner and with the same effect as other process.

No trustee summons may be served unless attachment on trustee process for a specified amount has been approved by order of the court. Except as provided in subdivision (i) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that it is more likely than not that the plaintiff will recover judgment, including interest and costs, in an aggregate sum equal to or greater than the amount of the trustee process and any insurance, bond, or other security, and any property or credits attached by writ of attachment or by other trustee process shown by the defendant to be available to satisfy the judgment.

Trustee process shall be sought by filing with the complaint a motion for approval of attachment on trustee process. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in Rule 4A(i). Except as provided in subdivision (i) of this rule, the motion and affidavit or affidavits with notice of hearing thereon shall be served upon the defendant in the manner prescribed in Rule 4 at the same time the summons and complaint are served upon the defendant.

A defendant opposing a motion for approval of attachment on trustee process shall file material in opposition as required by Rule 7(c). If the defendant is deemed to have waived all objection to the motion as provided in Rule 7(c) for failure to file opposition material within the time therein provided or as extended, the court shall, without hearing, upon a finding that the plaintiff is entitled to an attachment under the terms of this subdivision (c), enter an order of approval of attachment in an appropriate amount.

Any trustee process shall be served within 30 days after the date of the order approving the attachment. Promptly after the service of the trustee summons upon the trustee or trustees, a copy of the trustee summons with the officer's endorsement thereon of the date or dates of service shall be served upon the defendant in the manner provided in either Rule 4 or Rule 5.

(d) Approval of Limited Attachment on Trustee Process or Substituted Security.

(1) *Attachment of Specific Property.* In the order approving an attachment on trustee process, the court shall specify that the attachment is to issue solely against particular goods or credits upon a showing by the defendant (A) that the goods or credits specified are available for attachment on trustee process and would, if applied to satisfy any judgment obtained in the action, yield to the plaintiff an amount at least equal to the amount for which attachment on trustee process is approved in accordance with the criteria of subdivision (c), and (B) that the absence of such a limitation will result in hardship to the defendant.

(2) *Alternative Security for a Single Defendant.* At the hearing on a motion for approval of an attachment on trustee process against the goods or credits of a single defendant, the defendant may tender cash or bond at least equal to the amount of any attachment to be approved in accordance with the criteria of subdivision (c). If the court finds that the defendant has tendered cash in sufficient amount, it shall order that amount to be deposited with the court as provided in Rule 67 to be held as security for any judgment that the plaintiff may recover. If the court finds that the defendant has tendered a bond of sufficient amount and duration and with sufficient sureties, the court shall order the bond to be filed with the court. A surety upon a bond filed under this rule is subject to the terms and conditions of Rule 65(c). Upon such deposit or filing, the court shall further order that any prior attachment on trustee process against the defendant to satisfy a judgment on the claim for which security has been tendered shall be dissolved.

Thereafter, no further attachment on trustee process shall issue against the defendant except on motion of the plaintiff and a showing that the cash deposited or bond filed has become inadequate or unavailable to satisfy the judgment.

(3) *Single Security for Multiple Defendants*. At the hearing for approval of attachment on trustee process against the goods or credits of two or more defendants alleged to be jointly and severally liable to the plaintiff, one or more of the defendants may tender cash or bond sufficient, in the aggregate, to satisfy the total amount the plaintiff would be entitled to recover upon execution against all such defendants. Upon the findings required by paragraph (2) of this subdivision for a single defendant, the court may order the cash to be deposited or the bond filed with the court on the same conditions and with the same effect provided in that paragraph.

(e) Disclosure by Trustee; Subsequent Proceedings. A trustee shall serve that trustee's disclosure under oath within 20 days after the service of the trustee summons upon that trustee, unless the court otherwise directs. The proceedings after service of the trustee's disclosure shall be as provided by law. When a trustee reports for examination, notice thereof shall be served upon the attorney for the plaintiff, and upon motion the court shall fix a time for the disclosure to be made. Before the disclosure is presented to the court for adjudication, there shall be minuted upon the back thereof the name of the attorney for the plaintiff, the name of the trustee with the date of the service of the summons upon that trustee, and the docket number of the action.

(f) Adjudication and Judgment. The proceedings for adjudication on the disclosure of the trustee and for the rendition and execution of judgment and the imposition of costs shall be as provided by law.

(g) Trustee Process on Counterclaim, Cross-Claim or Third-Party Complaint. Trustee process may be used by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim, provided that the trustee resides or, if a corporation, maintains a usual place of business, in the county where the action is pending. If the counterclaim is compulsory under Rule 13(a), the party stating it may use trustee process, even though the trustee does not reside or maintain a usual place of business in the county where the action is pending.

(h) Subsequent or Additional Trustee Process. If no trustee process has issued, or if the time period prescribed in subdivision (c) of this rule for serving

trustee process has expired, the court on motion may issue an order of approval for an additional attachment on trustee process. The provisions of subdivisions (c), (d), and (i) of this rule apply to the motion and any trustee process ordered thereunder, except that notice if appropriate shall be served upon the defendant in the manner provided in Rule 5.

(i) Ex Parte Hearings on Trustee Process. An order approving trustee process for a specified amount may be entered ex parte only in an action commenced by filing the complaint with the court together with a motion for approval of attachment on trustee process as provided in subdivision (c) of this rule. The hearing on the motion shall be held forthwith. Such order shall issue if t court finds that it is more likely than not that the plaintiff will recover judgment in an amount equal to or greater than the aggregate sum of the trustee process and any insurance, bond or other security, or property or credits attached by writ of attachment or by other trustee process known or reasonably believed to be available to satisfy the judgment and that either (i) there is a clear danger that the defendant if notified in advance of the attachment on trustee process will withdraw the goods and credits from the hands and possession of the trustee and remove them from the state or conceal them, or otherwise make them unavailable to satisfy a judgment, or (ii) there is immediate danger that the defendant will dissipate the credits, or damage or destroy the goods, to be attached on trustee process. A maximum of one hundred dollars of demand bank accounts of the defendant held by any one trustee shall, however, be exempt from trustee process approved by an ex parte order under this subdivision. The motion for an ex parte order under this subdivision shall be accompanied by a certificate by the plaintiff's attorney of the amount of any insurance, bond, or other security, and any other attachment or trustee process which the attorney knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of Rule 11, shall be supported by affidavit or affidavits meeting the requirements set forth in Rule 4A(i).

(j) Dissolution or Modification of Trustee Process. On 2 days' notice to the plaintiff or on such shorter notice as the court may prescribe, any person having an interest in goods or credits that have been attached on trustee process pursuant to an ex parte order under subdivision (h) of this rule may appear, without thereby submitting to the personal jurisdiction of the court, and move the dissolution or modification of the trustee process, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such

hearing the plaintiff shall have the burden of justifying any finding in the ex parte order that the moving party has challenged by affidavit.

Upon motion and notice and a showing by any defendant that specific property or sufficient cash or bond is available to satisfy a judgment as provided in subdivision (d) of this rule, the court may modify an order of attachment on trustee process, whether issued ex parte or after hearing, to limit the attachment to particular goods or credits or to order cash or bond to be held by the court as security for the judgment, and to dissolve the prior attachment as to all other goods or credits of the defendant. If a prior attachment on trustee process has been perfected as to goods or credits specified in the modified order, the modified order shall relate back to the original attachment.

Nothing herein shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of trustee process that is otherwise available by law.

## RULE 4C. ARREST [ABROGATED]

## RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, notice of change of attorneys, pretrial memorandum, demand, offer of judgment, designation of record and statement of points on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to

represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendant and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: No Proof of Service Required. Subject to the provisions of Rule 26(f), all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party shall constitute a representation by the party, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court except that a justice or judge may permit the papers to be filed with that justice or judge, in which event the justice or judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. After hours or other office filings are subject to Rule 5(g).

(f) Filing of Papers Not in Compliance with Rules, Orders or Statute. Filings that are received but which are not signed, or are not accompanied at the time of filing by a legally required element, including but not limited to, a filing

fee, appeal fee, registry recording fee and envelope or summary sheet, or, if filed by an attorney, do not have the attorney's Maine Bar Registration Number, shall be returned by the clerk as incomplete. The clerk will not docket the attempted filing but will retain a copy of the attempted filing and the notice of return for six months. The offeror may refile the documents when all elements are complete. The filing will be docketed when the complete filing is received.

(g) After Hours and Other Office Filings.

(1) Clerks of courts may not, unless authorized by a judge or justice, accept filings for other courts, or accept pleadings or other documents filed with or left for the clerk after normal business hours. Unless the party or counsel has filed the pleading or document directly with a judge or justice, or the clerk has received explicit instructions from a judge or justice to accept an after-hours filing as filed on the date it is made, the clerk shall date stamp the filing, and docket it as filed, on the next regular business day.

(2) Judges or justices may, for good cause shown, accept filings made after regular business hours, accept filings for other courts, or may make arrangements with a clerk for the clerk to accept a filing after regular business hours. In such a matter, the judge, justice or clerk shall note the judge's authorization on the pleading or document, along with the date and time of actual receipt. The receiving official shall promptly transmit the filing to the proper court, where the filing shall be docketed as filed on the date originally received by the judge, justice, or clerk. Judges or justices may discuss the need for such filings with the offering party or counsel, and such discussions are deemed not to be ex parte communications, or to require notice to opposing parties or counsel.

(h) Pleading Summary Sheets.

(1) Any pleading which sets forth a claim for relief, except those specified in subdivision (3) below, shall be accompanied by a properly completed and executed Summary Sheet which is available in blank form at the clerk's office. Docket numbers of original Disclosure proceedings must be indicated on Summary Sheets initiating a second or subsequent request for disclosure.

(2) Summary Sheets are required to be filed with Post-Judgment Motions in proceedings under Rule 80(k).

(3) Summary Sheets are not required in Small Claims, UIFSA, Mental Health Actions or DHS Protective Custody or Administrative Paternity Proceedings and are not required in Special Actions (SA) other than Money Judgment requests for disclosure.

(i) Form of Papers.

(1) Size. All original papers shall be typed double-spaced or printed on 8 1/2 x 11 inch paper with text on only one side of each page.

(2) Condensed Transcripts. Unless otherwise ordered by the court, a party serving or filing a transcript of a deposition or other proceeding may elect to serve or file a copy of the transcript with up to four 8 1/2 x 11-inch pages or normal type size reduced so that such pages may be reproduced on a single 8 1/2 x 11-inch sheet, with text on one side of the sheet only, if the reporter or stenographer transcribing the deposition or proceeding has the capacity to produce a transcript in this format.

(3) Endorsement for Costs. In any case where an endorsement for costs is required, the name of an attorney of this State appearing on the complaint filed with the court, shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose.

(j) Fax Filings.

(1) Fax Filings. Facsimile documents are not acceptable substitutes for signed original documents required by M.R. Civ. P. 11 and will not be accepted as filings. Except as otherwise provided in this Rule, documents transmitted by facsimile may not be retained in a case file or docketed by a clerk. If an attempt is made to file pleadings or other documents by facsimile, the clerk shall dispose of the documents, and shall attempt to transmit a form notice of disposal back to the sender.

(2) In a proceeding under the Uniform Interstate Family Support Act, documentary evidence or orders from another court or tribunal may be received from another state by facsimile, and may be filed and docketed by a clerk.

(3) Judges may accept correspondence or other communications which are transmitted by fax for informational purposes but any such documents

accepted by a judge under this subdivision will not ordinarily be retained in any case file.

(k) Electronic Filing. Filings by electronic transmission of data or by means of a compact disk (CD) or floppy disk or any other method for electronic or internet filing in place of the filing of paper documents required by these rules, is not permitted.

## RULE 6. TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

For the purpose of this subdivision legal holidays shall include days on which the Chief Justice of the Superior Court or Chief Judge of the District Court pursuant to Rule 77(c) specifically orders the clerk's office closed.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in those rules.

(c) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

# III. PLEADINGS AND MOTIONS

## RULE 7. PLEADINGS ALLOWED: FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer, and a disclosure under oath, if trustee process is used; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim denominated as such; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or under Rule 26(g), shall be made in writing, shall state with particularity the grounds therefor and the rule or statute invoked if the motion is brought pursuant to a rule or statute, and shall set forth the relief or order sought.

(A) Any motion except a motion that may be heard ex parte shall include a notice that matter in opposition to the motion pursuant to subdivision (c) of this rule must be filed not later than 21 days after the filing of the motion unless another time is provided by these Rules or set by the court. The notice shall also state that failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. If the notice is not included in the motion, the opposing party may be heard even though matter in opposition has not been timely filed.

(B) In addition to the notice required to be filed by subparagraph (1)(A) of this subdivision, a motion for summary judgment served on a party shall include a notice (i) that opposition to the motion must comply with the requirements of Rule 56(h) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition; and (ii) that not complying with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

(C) A pre-judgment motion to decide a case on the merits, pursuant to Rule 12(b)(6), 12(c), or Rule 56, and a post-judgment

motion for relief, to modify, to reconsider, to enforce by contempt, for a new trial, or for a stay, pursuant to Rules 59, 60(b), 62, 66, or 80(k) shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the motion is filed. A pre-judgment motion to decide a case based on res judicata or any defense that is addressed in Rule 12 (b) (1), (2), (3), (4), or (5), is not subject to payment of a fee.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) Any party filing a motion, except motions for enlargement of time to act under these rules, for continuance of trial or hearing, or any motion agreed to in writing by all counsel, shall file with the motion or incorporate within said motion (1) a memorandum of law which shall include citations of supporting authorities, (2) a draft order which grants the motion and specifically states the relief to be granted by the motion, and (3) unless the motion may be heard ex parte, a notice of hearing if a hearing date is available. When a motion is supported by affidavit, the affidavit shall be served with the motion.

(4) Any party filing a motion for enlargement of time to act under these rules or for continuance of trial or hearing, shall include in the motion a statement that (1) the motion is opposed; or (2) the motion can be presented without objection; or (3) after reasonable efforts, which shall be indicated, the position of an opposing party regarding the motion cannot be determined.

(5) Motions for reconsideration of an order shall not be filed unless required to bring to the court's attention an error, omission or new material that could not previously have been presented. The court may in its discretion deny a motion for reconsideration without hearing and before opposition is filed.

(6) If a motion is pursued or opposed in circumstances where the moving or opposing party does not have a reasonable basis for that party's position, the court, upon motion or its own initiative, may impose the sanctions provided by Rule 11 upon the party, the party's attorney, or both.

(7) Except as otherwise provided by law or these rules, after the opposition is filed the court may in its discretion rule on the motion without hearing. The fact that a motion is not opposed does not assure that the requested relief will be granted.

(c) Opposition to Motions.

(1) Any party opposing a motion that was filed prior to or simultaneously with the filing of the complaint shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than the time for answer to the complaint, unless another time is set by the court.

(2) Any party opposing any other motion shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 21 days after the filing of the motion, unless another time is set by the court.

(3) A party failing to file a timely memorandum in opposition to a motion shall be deemed to have waived all objections to the motion.

(d) In addition to the requirements of this rule, motions for summary judgment are subject to the requirements of Rule 56.

(e) Reply Memorandum. Within 7 days of filing of any memorandum in opposition to a motion, or, if a hearing has been scheduled, not less than 2 days prior to the hearing, the moving party may file a reply memorandum, which shall be strictly confined to replying to new matter raised in the opposing memorandum.

(f) Form and Length of Memoranda of Law. All memoranda shall be typed or otherwise printed on one side of the page of 8 1/2 x 11 inch paper. The typed matter must be double spaced in at least 12 point type, except that footnotes and quotations may appear in 11 point type. All pages shall be numbered. Except by prior leave of court, no memorandum of law in support of or in opposition to a nondispositive motion shall exceed 10 pages. Except by prior leave of court, no memorandum of law in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or a motion for injunctive relief shall exceed 20 pages. No reply memorandum shall exceed 7 pages.

(g) The use of telephone or video conference calls for conferences and non-testimonial hearings is encouraged. The court on its own motion, or upon request of a party, may order conferences or non-testimonial hearings to be conducted by telephone conference calls or with the use of video conference equipment. The court shall determine the party or parties responsible for the initiation and expenses of a telephone or video conference or non-testimonial hearing.

## RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief which the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative fault, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, immunity, injury by co-employee, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(g) Pleadings by Agreement. An action may be commenced and issue joined therein, without the filing or service of a complaint and answer, by the filing of a statement, signed and acknowledged by all the parties or signed by their attorneys, specifying plainly and concisely the claims and defenses between the parties and the relief requested. Signing constitutes a certificate that the issues are genuine.

## RULE 9. PLEADING SPECIAL MATTERS

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, but when so made the party pleading the performance or occurrence has the burden of establishing it.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed they shall be specifically stated.

## RULE 10. FORM OF PLEADINGS

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the county in the Superior Court, the location of the District Court, the title of the action, the docket number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. Each pleading shall be dated. If a pleading contains a claim or defense involving title to real estate, the words "TITLE TO REAL ESTATE IS INVOLVED" shall be included directly beneath the designation of the pleading.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

## RULE 11. SIGNING OF PLEADINGS AND MOTIONS; SANCTIONS

(a) Attorney Signature Required; Sanctions. Subject to subdivision (b), every pleading and motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading or motion and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a representation by the signer that the signer has read the pleading or motion; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or motion is not signed, it shall not be accepted for filing. If a pleading or motion is signed with intent to defeat the purpose of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a represented party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading or motion, including a reasonable attorney's fee.

(b) Limited Appearance of Attorneys. To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant. The appearance shall state precisely the scope of the limited representation. The requirements of subdivision (a) shall apply to every pleading and motion signed by the attorney. An attorney filing a pleading or motion outside the scope of the limited representation shall be deemed to have entered an appearance for the purposes of the filing.

(c) Documents Filed in Federal Court. Any document originally filed in the United States District Court for the District of Maine or any other federal court, and transferred to a court subject to these rules, shall be deemed to be signed if the document is signed or signing of the document is indicated in a manner that is acceptable for filing in the court from which the document is transferred.

## RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED BY PLEADING OR MOTION---MOTION FOR JUDGMENT ON PLEADINGS

(a) When Presented. A defendant shall serve that defendant's answer within 20 days after the service of the summons and complaint upon that defendant, unless the court directs otherwise when service of process is made pursuant to an order of court under Rule 4(d) or 4(g), and provided that a defendant served pursuant to Rule 4(e), 4(f), or 4(j) outside the Continental United States or Canada may serve the answer at any time within 50 days after such service. A party who is served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party

may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then

available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by a motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

## RULE 13. COUNTERCLAIM AND CROSS-CLAIM

(a) Compulsory Counterclaims.

(1) *Pleadings.* Unless otherwise specifically provided by statute or unless the relief demanded in the opposing party's claim is for damage arising out of the ownership, maintenance or control of a motor vehicle by the pleader, a pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (A) at the time the action was commenced the claim was the subject of another pending action, or (B) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(2) *Removal of Claims Not Within the Subject-Matter Jurisdiction of the District Court.* If a compulsory counterclaim filed in the District Court is not within the subject-matter jurisdiction of that court, the pleader shall simultaneously file and serve notice of removal and pay the required removal fee under Rule 54A, and the action shall be removed to the Superior Court as provided in that rule.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party that is within the subject-matter jurisdiction of the court.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Maine or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party that is within the subject-matter jurisdiction of the court and arises out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) even if the claims of the opposing party have been dismissed or otherwise disposed of.

## RULE 14. THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defendant as a third-party plaintiff may cause to be served a summons and complaint upon a person not a party to the action who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The person so served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim within the subject-matter jurisdiction of the court against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim within the subject-matter jurisdiction of the court against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff's failure to do so shall have the effect of the failure to state a claim in a pleading under Rule 13(a). The third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13 and in the District Court may remove the action to the Superior Court as provided in Rule 76C. Any party may move for severance, separate trial, or dismissal of the third-party claim; the court may direct a final judgment upon either the original claim or the third-party claim above in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Orders for Protection of Parties and Prevention of Delay. The court may make such orders as will prevent a party from being embarrassed or put to undue expense, or will prevent delay of the trial or other proceedings, by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal under this rule is without prejudice.

## RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the condition of paragraph (2) of this subdivision is satisfied and, within the period provided by Rule 3 for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

## RULE 16. PRETRIAL PROCEDURE IN THE SUPERIOR COURT

(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 a conference of counsel concerning discovery, 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.

(b) Pretrial Order and Trial Management Conference. Unless the court has ordered otherwise when the action is placed on the trial list, the court shall enter a pretrial order setting deadlines for final pretrial filings and settlement discussions. The pretrial order shall be issued not later than 30 days prior to the commencement of the trial session and shall not be modified except on motion for good cause shown. On motion of a party or on its own motion, the court may defer the pretrial order and order the parties to file pretrial memoranda, briefs or such other filings as the court may direct. The court may conduct a trial management conference. Unless excused for good cause, each party shall be represented at the trial management conference by the attorney who is to conduct the trial and who shall be prepared to represent the party's position on settlement and on all matters involved in the conduct of the trial. At the trial management conference, the parties shall be prepared and authorized to discuss settlement in good faith. The court may conduct a settlement conference and may direct the parties, their insurers, and their authorized representatives to appear at the settlement conference and to participate in good faith.

(c) Reserved.

(d) Sanctions. If a party fails to comply with the requirements of this rule or any order made hereunder, the court may impose upon 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 that the costs of sanctions be borne by counsel and not paid by counsel's client.

## RULE 16A. PRETRIAL PROCEDURE IN THE DISTRICT COURT

(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 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, the court shall make an order, which recites the action taken at the conference, 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 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 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.

## RULE 16B. ALTERNATIVE DISPUTE RESOLUTION

This rule is applicable to cases filed in the Superior Court and cases removed to the Superior Court from the District Court.

(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.

(b) Exemptions. The following categories of cases are exempt from the requirements of this rule:

(1) Actions under Rule 80D, 80L, and Chapter XIII;
(2) Appeals under Rule 80B or Rule 80C;
(3) Appeals under 36 M.R.S.A. § 151;
(4) Actions for recovery of personal injury damages where the plaintiff requests exemption and certifies that the likely recovery of damages will not exceed $30,000.
(5) Actions where the parties have participated in statutory prelitigation screening or dispute resolution processes including medical malpractice and Maine Human Rights Act cases;
(6) Actions where the parties certify that they have engaged in formal alternative dispute resolution before a neutral third party. The certification shall state the name of the neutral and the date(s) on which formal alternative dispute resolution conferences occurred;
(7) Actions for nonpayment of notes in mortgage foreclosures and other secured transactions;
(8) Actions by or against prisoners in state, federal or local facilities; and

(9) Actions exempted by the court on motion by a party and for good cause shown but only where the motion seeking exemption is filed within 30 days of the date of the Rule 16(a) scheduling order.

(c) Motions and Discovery. Motions and discovery practice shall proceed in accordance with these rules while an alternative dispute resolution process is being scheduled and held.

(d) Neutral Selection and Conference Scheduling.

(1) Promptly after the filing of an answer in the Superior Court or removal from the District Court, the parties shall confer and select an alternate dispute resolution process (that is, mediation, early neutral evaluation, or nonbinding arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they shall proceed to mediation. If the parties cannot agree on the selection of a neutral, they shall notify the court, which shall designate a neutral third party, with experience appropriate to the nature of the case, from the appropriate roster of court neutrals developed by CADRES;

(2) Unless the court orders or the parties otherwise agree, fees and expenses for the neutral shall be apportioned and paid in equal shares by each party, due and payable according to fee arrangements worked out directly by the parties and the neutral. Fees and expenses paid to the neutral shall be allowed and taxed as costs in accordance with Rule 54(f). If any party is unable to pay its share of the fees and expenses of the neutral, that party may apply for in forma pauperis status pursuant to Rule 91. If granted, the court may allocate the fee among those parties who are not in forma pauperis or ask the selected neutral to undertake the conference on a reduced fee basis. Failing the consent of the selected neutral to the reduced fee, the court will designate an alternate neutral from the roster developed by CADRES who will agree to undertake the assignment on a reduced fee basis or pro bono.

(3) Once the neutral is selected or designated, the parties shall agree with the neutral on a time and place for the conference. The plaintiff shall notify the court of the name of the neutral and the time and place for the conference no later than 60 days after the date of the Rule 16(a) scheduling order. The conference must be held and completed no later than 120 days after the date of the Rule 16(a) scheduling order.

(e) Conference Issues. At the alternative dispute resolution conference, the only required function is to conduct the ADR process selected by the parties. If at the conclusion of that process and, after a serious effort by the parties, agreement is not reached on all issues, then the neutral may proceed to a case management discussion with the parties to try to reach agreement on the following: (i) identification, clarification and limitation of remaining issues; (ii) stipulations; and (iii) discovery-related issues;

The neutral should not address case management issues in cases that are specially assigned or subject to single judge management, except with the approval of the assigned judge. When case management issues are addressed, the neutral may not extend deadlines or otherwise modify directives in the scheduling order set pursuant to M.R. Civ. P. 16(a). An ADR conference need not be reconvened if, after an initial session, the only remaining issues are case management issues.

(f) Conference Attendees.

(1) Conference attendees shall include:

(i) Individual parties;
(ii) A management employee or officer of a corporate party, with appropriate settlement authority, whose interests are not entirely represented by an insurance company;
(iii) A designated representative of a government agency party whose interests are not entirely represented by an insurance company;
(iv) An adjuster for any insurance company providing coverage potentially applicable to the case, provided that the adjuster participate in the conference with appropriate settlement authority;
(v) Counsel for all parties; and
(vi) Nonparties whose participation is essential to settlement discussions—including lienholders—may be requested to attend the conference.

(2) The court may impose appropriate sanctions on any party or representative required and notified to appear at a conference who fails to attend.

(3) Attendance shall be in person, or in the discretion of the neutral, for good cause shown, by telephone or video conference.

(g) Conference Documents. If requested by the neutral, five days prior to the conference, the plaintiff shall provide to the neutral:

-The complaint;
-The answer or other responsive pleading;
-Any pretrial scheduling statement;
-Any pretrial order that may have issued; and
-Any dispositive motions and memoranda that have been filed in connection with those motions.

(h) Conference Report and Order.

(1) *Settlement*. If the conference results in a settlement, the parties shall, within 10 days after the conference, report that fact to the court and include a proposed order concerning the settlement. The court shall order the appropriate entry to be made on the docket.

(2) *Neutral Report*. If the conference does not result in a settlement, the neutral shall, within 10 days after the conference, file with the court a report and, if appropriate, a proposed order which indicates any agreements of the parties on matters such as stipulations, identification and limitation of issues to be tried, discovery matters and further alternative dispute resolution efforts. If there are no agreements of the parties, the report shall so indicate. If the neutral does not file the report, the parties shall prepare and file the report indicating their points of agreement and disagreement. The parties shall be equally responsible for assuring that the neutral's report is filed in a timely manner and may be subject to appropriate sanctions if filing of the report is filed later than 130 days after 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 210 days after the date of the Rule 16(a) scheduling order. Cases required to have an alternative dispute resolution conference in accordance with this rule but subsequently exempted from this rule by court order pursuant to Rule 16B(b) shall pay the jury fee: (A) when exemption is being requested pursuant to M.R. Civ. P. 16B(b)(4), or (B) within 14 days of exemption being ordered by the court pursuant to Rule 16B(b)(9) or any other provision of these rules. If the jury fee is not paid within the time required, any right to jury trial shall be deemed waived and the case shall be scheduled on the nonjury list for trial.

(j) Standards for Alternative Dispute Resolution. No agreement or order to enter into alternative dispute resolution pursuant to this rule may be entered or issued without consideration being given to the needs of indigent or unrepresented parties or parties in situations where there is a potential for violence, abuse, or intimidation.

(k) Confidentiality. A neutral who conducts an alternative dispute resolution conference pursuant to this rule, or an alternative dispute resolution process pursuant to subsection (b)(6), shall not, without the informed written consent of the parties, disclose the outcome or disclose any conduct, statements, or other information acquired at or in connection with the ADR conference. A neutral does not breach confidentiality by making such a disclosure if the disclosure is: (i) necessary in the course of conducting the dispute resolution conference and reporting its result to the Court as required in (h)(2); (ii) information concerning the abuse or neglect of any protected person; (iii) information concerning the intention of one of the parties to commit a crime, or the information necessary to prevent the crime or to avoid subjecting others to the risk of imminent physical harm; or (iv) as otherwise required by statute or court order.

(l) Sanctions. If a party or a party's lawyer fails without good cause to appear at a dispute resolution conference scheduled pursuant to this rule, or fails to comply with any other requirement of this rule or any order made thereunder, the court may, upon motion of a party or its own motion, order the parties to submit to alternative dispute resolution, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or lawyer, or both, to pay the reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the judge finds an award would be unjust in the circumstances.

## IV. PARTIES

### RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Maine. An insurer who has paid all or part of a loss may sue in the name of the assured to whose rights it is subrogated. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest. When in proceedings in the nature of quo warranto the title to office in a private corporation is involved, the action may be brought in the name of the interested party and the Attorney General need not be a party thereto.

(b) Guardians and Other Representatives. Whenever a minor or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person. In any action in which there are or may be defendants who have been served only by publication and who have not appeared, the court may appoint an agent, guardian ad litem, or next friend to represent them.

(c) Subrogated Insurance Claims. No claim or counterclaim shall be asserted on behalf of an insurer in the name of the assured for damages resulting from alleged acts of negligence, claimed by right of subrogation or assignment, unless at least 10 days prior to asserting such claim the insurer gives notice in writing to the assured of its intention to do so. Such notice shall be served in the manner provided for service of summons in Rule 4 or by registered or certified mail, return receipt requested, with instructions to deliver to addressee only. There

shall be attached to the pleading asserting such subrogation claim a copy of the notice together with either the return of the person making the service or the return receipt. An assured or any party suing in an assured's right who desires to assert a claim arising out of the same transaction or occurrence shall notify the insurer or its attorney in writing within 10 days after receipt of such notice.

## RULE 17A. SETTLEMENT OF CLAIMS OF MINOR PLAINTIFFS

(a) Motion or Application for Settlement. In any action commenced by or on behalf of a minor, the guardian, guardian ad litem, or next friend of such minor may move the court for an order of approval of settlement. If no action has been commenced on a claim by a minor, any such representative may file an application in any court in which such an action might have been commenced, seeking an order of approval of settlement. The application shall contain a short and plain statement of the claim to be settled. No service of the application and no further pleadings shall be required unless directed by the court.

The motion or application and supporting papers may be prepared by the attorney for an adverse party or by an attorney obtained by an adverse party to represent the interests of the minor.

(b) Supporting Papers. Any motion or application filed in accordance with subdivision (a) of this rule shall be accompanied by:

(1) an affidavit or verified application of the moving party or plaintiff stating the terms of and any reasons for approving the settlement and any fee to be paid to an attorney for the minor and also stating that the movant or plaintiff was informed of the right to attend the hearing upon the motion or application and that the right to attend a hearing is waived, where court action without hearing is sought;

(2) A statement by the moving party or plaintiff describing the age of the minor, the nature of the injuries or damages suffered by the minor, and the facts of the event which led to the injury or damage. This statement shall be in sufficient detail to allow the court to evaluate the injuries or damages in determining whether to approve the settlement. Where the total amount of the proposed settlement exceeds $5,000 or where the attorney who prepared the motion has any connection with a party adverse to the plaintiff, the statement shall have attached to it copies of any police reports, any emergency room reports of the incident and resulting

injuries or damages, a statement from a physician indicating the nature of the injuries and expectations for recovery or permanent impairment, and such other reports of the injuries or damages and the incident which caused the injuries or damages as the court may require;

(3) An affidavit of the attorney who prepared the motion or application and the supporting papers stating whether or not the attorney was retained at the instance of, represents, or has any connection with a party adverse to the minor.

(4) Where a defendant is not represented by counsel, a statement signed by the defendant, or a representative of the defendant's insurer, indicating that the defendant consents to judgment in the settlement amount; and

(5) A draft proposed order which states all of the financial arrangements of the settlement, allocates the funds as indicated in the settlement, designates a depository of the funds received for the minor and subjects any withdrawals to court approval until the minor reaches majority.

(c) Hearing and Judgment. At the hearing on the motion or application the court may require the moving party or plaintiff, the minor, and any attorney representing the minor to attend, and may make such inquiry as it deems necessary into the circumstances giving rise to the claim, the nature and extent of the damages sustained by the minor, other proceedings concerning the same claim, and any other matters pertinent to the adequacy of the settlement. Under exceptional circumstances the court may appoint a referee under Rule 53 to make such inquiry and to make recommendations thereon. After hearing, the court may approve the settlement or order entry of final judgment in accordance with its terms or may, with the consent of the parties, make such other order as justice may require, including provisions for a trust created for the minor's benefit and for payments to be made to the minor after age 18. Judgment shall be entered without costs and shall approve the fee for the minor's attorney, if any.

(d) Custody of Proceeds. The court may order that the proceeds of the settlement be deposited to the credit of the minor with such depository, trustee or custodian and on such terms as the court may designate until the minor reaches majority. No withdrawal of funds so deposited shall be made unless approved by a justice or judge of the court in which the order of deposit was entered.

(e) Verification. Not later than 30 days after entry of the order approving the settlement, the attorney or party to whom the funds are paid shall file a sworn affidavit verifying that the funds paid have been deposited as required by the court order, stating the depository financial institution and account number, and certifying that a copy of the court's order with restrictions on withdrawal, if any, has been provided to the depository financial institution.

## RULE 18. JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join either as independent or as alternate claims as many claims either legal or equitable or both, and individually and in the aggregate within the subject-matter jurisdiction of the court, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims, if within the subject-matter jurisdiction of the court, may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to the plaintiff, without first having obtained a judgment establishing the claim for money.

## RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall

determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

## RULE 20. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief within the subject-matter jurisdiction of the court jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief within the subject-matter jurisdiction of the court in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

## RULE 21. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and presented separately.

## RULE 22. INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability in an action may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

## RULE 23. CLASS ACTIONS

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court

will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

## RULE 23A. DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought in the Superior Court by one or more shareholders to enforce a right of a corporation, the corporation having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder at the time of the transaction of which the plaintiff complains or that the plaintiff's share thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity that the plaintiff has made a written demand upon the corporation to take the suitable action. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the corporation in enforcing the right of the corporation. The action shall not be dismissed or settled without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs if the court determines that a proposed discontinuance or settlement substantially affects the interests of a corporation's shareholders or a class of shareholders.

## RULE 23B. DERIVATIVE ACTIONS BY MEMBERS OF UNINCORPORATED ASSOCIATIONS

In a derivative action brought in the Superior Court by one or more members to enforce a right of an unincorporated association, the association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a member at the time of the transaction of which the plaintiff complains or that the plaintiff's membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the members similarly situated in enforcing the right of the association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to members in such manner as the court directs.

## RULE 24. INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Intervention by the State. When the constitutionality of an act of the legislature affecting the public interest is drawn in question in any action to which the State of Maine or an officer, agency, or employee thereof is not a party, the plaintiff shall notify the Attorney General, and the court shall permit the State of Maine to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

## RULE 25. SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

## V. DEPOSITIONS AND DISCOVERY

### RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for

that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to identify the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years, and the compensation to be paid for the study and testimony, provided however, that, unless otherwise ordered by the court, information relating to qualifications, publications and compensation need not be provided for experts who have been treating physicians of a party for any injury that is a subject of the litigation; (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision

(b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) *Information Withheld under Claims of Privilege or Protection of Trial Preparation Materials; Inadvertent Production of Privileged or Trial Preparation Material*.

(A) Claim of Privilege and Identification Required. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Inadvertent Production of Privileged or Trial Preparation Material. If information is inadvertently produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps

to retrieve it. The producing party must preserve the information until the claim is resolved.

(6) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On application under Rule 26(g) to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations and remedies of Rule 26(c). The court may specify conditions for the discovery and shall impose on the requesting party the reasonable expense of producing such electronically stored information.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any justice or judge of the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including without limitation one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; (9) that the party taking the deposition pay the traveling expenses of the opposite party and of his attorney for attending the taking of the deposition; and (10) that a witness under the control of the party taking the deposition be required to be brought within the state for his deposition. The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person

provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Filing of Discovery.

(1) Unless otherwise ordered by the court, or necessary for use in the proceeding, notices, written questions and transcripts of depositions prepared in accordance with Rule 5(f), interrogatories, requests pursuant to Rules 34 and 36, and answers, objections and responses thereto shall be served upon other parties but shall not be filed with the court. Notification of the date on which discovery papers were served on the parties shall be filed with the clerk. The party that has served notice of a deposition or has otherwise initiated discovery shall be

responsible for preserving and ensuring the integrity of original transcripts and discovery papers for a period of two years after final judgment for use by the court or other parties.

(2) If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, or are necessary to a ruling on a motion, the complete original of the transcript of the discovery material to be used, prepared in accordance with Rule 5(f), shall be filed with the clerk 7 days prior to trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file with the memorandum required by Rule 7(b)(3) a list of specific citations to the parts on which the party relies. Discovery transcripts and materials thus filed with the court shall be returned to appropriate counsel after final disposition of the case.

(g) Discovery Motions

(1) *Motions.* No written motions under Rule 26 through 37 shall be filed without the prior approval of a justice or judge of the court in which the action is pending. The moving party shall first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If the dispute is not resolved by agreement, the moving party shall request a hearing from the clerk by letter. The letter shall succinctly and without argument or citation describe the nature of the dispute and the relief requested. In cases involving objections to interrogatories or document requests, the moving party shall attach to the letter copies of only the specific objections in question and the specific interrogatories or requests to which objection has been made. In exigent circumstances a request for a hearing may be made to the clerk by telephone or in person. The request for a hearing constitutes a representation to the court, subject to Rule 11, that the conference with the opposing party has taken place and that the moving party has made a good faith effort to resolve the dispute. The clerk shall inform the moving party of the manner, date and time of the hearing. The moving party shall provide prompt notice of the hearing to all the other parties. If the hearing is to be conducted by telephone conference or video conference, the moving party shall connect all other parties who elect to participate and shall initiate the telephone or video conference call to the court.

(2) *Hearing or Conference.* The court may issue an order without a hearing if the request is based on a failure to either answer or object to outstanding discovery requests. In all other cases the parties shall be prepared to offer oral

argument at a hearing or a telephone or video conference on the discovery issues in question if scheduled by the court. No written argument shall be submitted and no motion papers shall be filed with the clerk without prior leave of the court.

(3) *Orders at Hearing.* The justice or judge may make such orders at the hearing as are necessary to resolve the dispute. Such orders shall be reduced to writing and shall constitute orders for purposes of Rule 37. If the motion is not decided at the hearing, the justice or judge may order a written motion and supporting memoranda to be filed under Rules 7 and 37 and may make such orders as are necessary to narrow or dispose of the dispute.

RULE 27. DISCOVERY BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(1) *Petition.* A person who desires to perpetuate testimony or to obtain discovery under Rule 34 or 35 regarding any matter that may be cognizable in any court of the state may file a verified petition in the Superior Court in the county, or in the District Court in the division, of the residence of any expected adverse party; and if there be more than one expected adverse party, some of whom may live in different counties or divisions, then the petition may be filed in any county or division in which an expected adverse party may reside.

The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to an action cognizable in a court of the state but is presently unable to bring it or cause it to be brought, (ii) the subject matter of the expected action and the petitioner's interest therein, (iii) the facts which the petitioner desires to establish by the proposed testimony or other discovery and the petitioner's reasons for desiring to perpetuate or obtain it, (iv) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (v) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the petitioner expects to elicit or obtain from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony or to seek discovery under Rule 34 or 35 from the persons named in the petition.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with

a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d), (e), or (j) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), (e), or (j), an attorney who shall represent them and whose services shall be paid for by the petitioner in an amount fixed by the court, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(b) apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony or other discovery may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions; or shall make an order designating or describing the persons from whom discovery may be sought under Rule 34 and specifying the objects of such discovery; or shall make an order for a physical or mental examination as provided in Rule 35. Discovery may then be had in accordance with these rules. For the purpose of applying these rules to discovery before action, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such discovery was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the court by the authority of which it is taken, it may be used in any action involving the same subject matter subsequently brought in any court of this state having cognizance thereof in accordance with the provisions of Rule 32(a) and (b).

(b) Pending Appeal. If an appeal has been taken from a judgment or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony or may allow discovery under Rule 34 or 35 for use in the event of further proceedings in that court. In such case the party who desires to perpetuate the testimony or obtain the discovery may make a motion therefor upon the same notice and service thereof as if the action was pending in that court. The motion shall show (1) the names and addresses of persons to be examined or from

whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit or obtain from each; (2) the reasons for perpetuating the testimony. If the court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in paragraph (3) of subdivision (a) of this rule and thereupon discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in civil actions generally.

(c) Recording in Registry of Deeds. Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken may, within 90 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside.

(d) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) Within the State. Within the state depositions shall be taken before a notary public or a person appointed by the court. A person so appointed has power to administer oaths and take testimony.

(b) Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person appointed or commissioned by the court, and such a person shall have the power by virtue of the appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory or country)." Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason

that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

## RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

## RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, either within or without the state, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. Unless otherwise ordered by the court, each party to the action may take no more than 5 depositions. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 10 days before the time of the taking of the deposition, but the court on an ex parte application and for good cause shown may prescribe a shorter notice.

The notice shall state:

(A) The time and place for taking the deposition and whether a stenographic court reporter will be present to record the deposition;

(B) The name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular category of persons to which the person to be deposed belongs;

(C) The person before whom the deposition will be taken; and

(D) The method by which the deposition will be recorded, which method shall be one of the methods designated in subdivision (b)(4) of this rule.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) A deposition may be recorded by:

(A) Shorthand writing,

(B) Stenotype machine,

(C) Tape recording with multi-track tape,

(D) Video camera recording, or

(E) Any other method agreed to by the parties or approved by the court.

Any method for recording a deposition shall:

(A) Comply with the requirements of Rule 28;

(B) Assure an accurate and trustworthy recording;

(C) Provide clear identification of the separate speakers;

(D) Permit editing for use at trial in a manner that will allow expeditious removal of objectionable and extraneous material without significant disruption in presentation of the edited testimony to a jury;

(E) Allow prompt preparation of a written transcript of the proceedings if such is ordered by any party or the court; and

(F) Allow prompt copying of any audio or video tape of the proceedings, where an audio or video tape is used, if such is ordered by any party or the court.

Any party may object to the taking of a deposition on the grounds that the recording method is not one of those approved above, or that the recording method will not comply with one or more of the criteria (A) through (F) above. Such an objection shall be served in writing and received by the other parties and the court at least 3 days prior to the scheduled date for the deposition. Where such an objection is served, the deposition shall be deferred until such time as the objection is heard by the court.

In a video deposition, the camera shall focus only on the witness and any exhibits utilized by the witness, unless the parties agree otherwise.

Any other party may record a deposition by any means, provided that the recording does not disrupt or impede the deposition process. The method of recording specified in the notice by the party noticing the deposition shall constitute the only official record of the deposition.

(5) The notice to a party deponent may be accompanied by a request that at the taking of the deposition the party deponent produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26(b). The party deponent may, within 5 days after service of the notice, serve upon the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of any justice or judge of the court in which the action is pending. The party taking the deposition may move at any time before or during the taking of the deposition for an order under Rule 37(a) with respect to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Maine Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be

recorded by the means specified in the notice of taking as provided in subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Manner of Making Objections; Duration of Depositions; Motion to Terminate or Limit Examination.

(1) Any Objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) No deposition shall exceed 8 hours of testimony, but the court may allow additional time on such terms as justice requires for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any justice or judge of the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to

make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness by the officer for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. The officer shall notify counsel of record of the witness' action or inaction.

(f) Certification by Officer; Exhibits; Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then promptly deliver or mail it to the party that has served the original notice of a deposition.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person producing the materials affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Where the deposition is recorded electronically and a transcript is not prepared, the certification and materials required in paragraph (1) of this subdivision shall be filed with the tape cassette or other electronically preserved record of the deposition.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney fees.

(h) Depositions for Use in Foreign Jurisdictions.

(1) The deposition of any person may be taken in this state upon oral examination pursuant to the laws of another state or of the United States or of another country for use in proceedings there.

(2) If a party seeking to take a deposition or depositions under this subdivision files with the clerk in the county where any deponent resides or is employed or transacts business in person an application as provided in paragraph (3) of this subdivision,

(i) the clerk shall docket the application as though it were a pending action under these rules and may issue a subpoena or subpoenas as provided in Rule 45, in aid of the taking of the deposition of any person named or described in the application;

(ii) whether or not a subpoena has issued, any deponent or party may apply for and be granted any appropriate relief as provided in subdivision (d) of this rule and in Rules 37(a) and 37(b)(1).

(3) The application required by paragraph (2) of this subdivision shall bear the same title as the action or proceeding in the court where it is pending and shall set forth

(i) The name and location of the court in which the action or proceeding is pending.

(ii) The title and docket or other identifying number of the action or proceeding in the court where pending.

(iii) A brief statement of the nature of the action or proceeding and the provisions of the laws of the jurisdiction where the action or proceeding is pending which authorize the deposition.

(iv) The time and place for taking each deposition.

(v) The name and address of each person to be examined, if known, and if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs.

(vi) If a subpoena duces tecum is to be served, a designation of the materials to be produced.

(vii) A statement that timely and adequate notice of the taking has been given to all opposing parties either in the manner required by the laws of the jurisdiction where the action or proceeding is pending or in the manner provided in paragraph (1) of subdivision (b) of this rule.

The application shall be signed by a member of the bar of this state, and the member's signature constitutes a certification by the member that to the best of the member's knowledge, information, and belief all statements and supporting facts contained therein are true. The sanctions provided by Rule 11 are applicable to the certification.

## RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, either within or without the state, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(d) Depositions for Use in Foreign Jurisdictions. The deposition of any person may be taken in this state upon written questions pursuant to the laws of another state or of the United States or of another country for use in proceedings there. The provisions of Rule 30(h)(2) and (3) apply to such depositions.

## RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment, or a conflicting commitment that could not be broken or scheduled at another time without subjecting the witness or others to legally enforceable sanctions or significant risk of physical detriment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United

States or of any State has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Transcript. Regardless of the method by which a deposition was recorded or is to be used in court proceedings, a party using a deposition in court proceedings under this rule shall provide to the court an accurate written transcript of the deposition.

(d) Effect of Errors and Irregularities in Depositions.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are

waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, indorsed, transmitted, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

## RULE 33. INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Unless otherwise ordered by the court, more than one set of interrogatories may be served, but not more than a total of 30 interrogatories may be served by a party on any other party. Each distinct subpart in an interrogatory shall be deemed a separate interrogatory for the purposes of this rule.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an

interrogatory. A party in responding to interrogatories shall set forth each interrogatory in full immediately preceding the party's answer or objection thereto.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

## RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, electronically stored information, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection

and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedures. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to produce or to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. If a request does not specify the form for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form.

A party upon whom a request is served to produce the party's medical, employment or other records in the possession of a third party may, at the party's option, produce in place of such records an effective written authorization by which the submitting party may obtain the requested records. Within 10 days of receiving records pursuant to the authorization, the party submitting the request shall serve upon the authorizing party a complete copy of the records so obtained.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a licensed physician or a mental examination by a licensed psychologist, or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician or Psychologist.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the person against whom the order is made shows that it is unobtainable. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of the deposition of the examiner in accordance with the provision of any other rule.

## RULE 36. REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. Subject to the provisions of subdivision (b) of this rule, the matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. A party in responding to requests for admission shall set

forth each request in full immediately preceding the party's answer or objection thereto.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

## RULE 37. FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* A motion for an order to a party or a deponent shall be made under Rule 26(g). On matters relating to a deposition being taken outside the state, the court may order that an application for an order to the deponent be made to any court having general civil jurisdiction in the place where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or

inspection submitted under Rule 30(b)(5) or 34, fails to respond that inspection will be permitted as requested or fails to produce or to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) *Sanctions by Court in Place Where Deposition Is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the place in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 26(g), Rule 35 or subdivision (a) of this rule, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 26(g) or Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order

requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take a deposition, after being served with a proper notice, or to comply with a properly served request for production under Rule 30(b)(5), without having made an objection thereto, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Electronically Stored Information. Absent exceptional circumstances, the court shall not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

## VI. TRIALS

### RULE 38. JURY TRIAL OF RIGHT IN THE SUPERIOR COURT

(a) Right Preserved; Number. The right of trial by jury as declared by the Constitution of the State of Maine or as given by a statute shall be preserved to the parties inviolate.

(b) Demand. In an action in the Superior Court, any plaintiff may demand a trial by jury of any issue triable of right by a jury by filing a demand and paying the fee therefor as required by the scheduling order entered by the court. For cases required to have an alternative dispute resolution conference pursuant to Rule 16B, payment of the jury fee shall be made as required by Rule 16B(i).

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If a plaintiff demands trial by jury for none or only some of the issues, the defendant shall file within 10 days a demand for trial by jury of any other or all of the issues of fact in the action and, in the absence of a demand by the plaintiff, pay the jury fee upon filing the demand.

(d) Waiver. The failure of a party to make a demand and pay the fee as required by this rule constitutes a waiver by that party of trial by jury; provided that for any reason other than a party's own neglect or lack of diligence, the court may allow a party to file and serve a demand upon all other parties within such time as not to delay the trial.

(e) Withdrawal. A demand for trial by jury made as provided in this rule may not be withdrawn without the consent of all parties.

## RULE 39. TRIAL BY JURY OR BY THE COURT

(a) By Jury. When trial by jury has been demanded as provided in Rule 38 or Rule 76C, the action shall be placed on the Jury Trial List when appropriate under Rule 16, and the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the State of Maine.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, in the

Superior Court the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Hearings Outside County. Any hearings without a jury may be held at such place in any county or division as the court may appoint; and the clerk in the county or division in which the action is pending shall transmit the papers in the action to the justice or judge to hear the same, who shall return them after hearing.

(d) Advisory Jury and Trial by Consent. In all actions in the Superior Court not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury, or the court, with the consent of the parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCES

(a) Definitions.

**(1)** "Continuance Order" is defined as an order entered by a judge that effectively removes a case from a trial list or date certain court event in response to a written motion. Absent the entry of a continuance order, a case is subject to being called for trial throughout the trial list period or for a court event on the designated date certain.

**(2)** "Effectively removes a case from a trial list" includes the unavailability for essential dates or when the number of days necessary for trial of the case, based on the parties' good faith estimate of the time for trial, is more than the difference between (i) the number of days remaining on a trial list at the time a motion for a continuance or a request for protection is made, and (ii) the number of days sought in the motion for a continuance or the request for protection.

(3) "Essential Dates" include jury selection days, case management days, and other dates essential to the completion of trial on the list at issue.

(4) "Request for Protection" is defined as an informal, non-docketed written request that a case not be called for trial on one or more specified days of a trial list and which, if allowed, would not effectively remove a case from a trial list. A request for protection shall only be acted upon by a judge and shall not take the place of or be treated as a motion for continuance.

**(5)** "Scheduled" is defined as follows: (i) For trial list cases, "scheduled" means a case has been assigned to a trial list as that term is defined in this rule; (ii) for all other cases, "scheduled" means that a date certain has been identified for a hearing or trial.

**(6)** "Trial list" means the list of a group of cases assigned to an actual, discrete period of time. A trial list is not simply a list of cases ready for trial. Rather, it is a list for a trial session that has beginning and ending dates, consists primarily of consecutive court days, and realistically exposes all of the assigned cases to trial.

**(b) Assignment for Trial.**

(1) *Jury Trial List.* In those actions in which a jury trial has been properly demanded, the clerk of the Superior Court shall maintain a Jury Trial List and a Nonjury Trial List of actions in the chronological order in which they are transferred from the Pre-Trial List by direction of the court under Rule 16. Scheduling of actions for trial from the lists shall be at the direction of the court.

(2) *Nonjury Trial List.* The court may by order provide for the setting of cases for trial upon the calendar, the order in which they shall be heard and the resetting thereof. All actions, except those otherwise governed by statute or court orders shall be in order for trial at a time set by the court on such notice as it deems reasonable, but not less than 10 days after service of the last required pleading.

**(c) Continuances.** A motion for a continuance order shall be made immediately after the cause or ground becomes known. The motion must specify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, and (3) whether the motion is opposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be given immediately to all other parties. The fact that a motion is unopposed does not assure that the requested relief will be granted. Continuances should only be granted for substantial reasons.

**(d) Unavailable Witness or Evidence.** The court need not entertain any motion for a continuance based on the absence of a material witness unless supported by an affidavit which shall state the name of the witness, and, if known, that witness' residence, a statement of that witness' expected testimony and the basis of such expectation, and the efforts which have been made to procure that

witness' attendance or deposition. The party objecting to the continuance shall not be allowed to contradict the statement of what the absent witness is expected to testify but may disprove any other statement in such affidavit. Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree in writing, signed by that party or that party's attorney, that the same shall be received and considered as evidence at the trial as though the witness were present and so testified. The same rule shall apply, with necessary changes, when the motion is grounded on the want of any material document, thing or other evidence. In all cases, the grant or denial of a continuance shall be discretionary whether the foregoing provisions have been complied with or not.

**(e) Protections.** A request for a protection from a trial list shall be made immediately after the cause or ground becomes known, and shall be submitted in a written Uniform Request for Protection Form or in a writing containing substantially the same information.

## RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal: Effect Thereof.

(1) *By Plaintiff; by Stipulation.* Subject to the provisions of Rule 23(e) and of any statute, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action; provided, however, that no action wherein a receiver has been appointed shall be dismissed except by order of the court. A dismissal under this paragraph may be as to one or more, but fewer than all claims, but not as to fewer than all of the plaintiffs or defendants. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state or any other state or the United States an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim

shall remain pending for independent adjudication by the court despite the dismissal of the plaintiff's claim. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.

(1) *On Court's Own Motion.* The court, on its own motion, after notice to the parties, and in the absence of a showing of good cause to the contrary, shall dismiss an action for want of prosecution at any time more than two years after the last docket entry showing any action taken therein by the plaintiff other than a motion for continuance.

(2) *On Motion of Defendant.* For failure of the plaintiff to prosecute for 2 years or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

(3) *Effect.* Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

## RULE 42. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, in the same county or division or a different county or division, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial in the county or division where the action is pending, or a different county or division, of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(c) Convenience and Justice. In making any order under this rule, the court shall give due regard to the convenience of parties and witnesses and the interests of justice.

## RULE 43. TAKING OF TESTIMONY

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless a statute, these rules or the Rules of Evidence provide otherwise. The court may, on its own motion or for good cause shown upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence applied in the courts of this state.

(b) Scope of Examination and Cross-Examination [Abrogated].

(c) Record of Excluded Evidence [Abrogated].

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Copies of Deeds [Abrogated].

(g) Copies of Corporate Records. Copies of any votes or other records upon the books of a corporation or of any papers in its files may, when attested by its clerk, be received in evidence unless it appears that the adverse party has been denied access to the originals at reasonable hours.

(h) Notice to Produce. No evidence of the contents of a writing in the hands of an adverse party will be admitted unless previous notice to produce the writing at trial has been given, nor shall counsel be allowed to comment upon a refusal to produce it without first proving such notice.

(i) Examination of Witnesses. The examination and cross-examination of each witness shall be conducted by one counsel only on each side, except by special leave of court, and counsel shall stand while so examining or cross-examining unless the court otherwise permits. Any re-examination of a witness shall be limited to matters brought out in the last examination by the adverse party except by special leave of court.

(j) Order of Evidence. A party who has rested cannot thereafter introduce further evidence except in rebuttal unless by leave of court.

(k) Attorneys as Bail or Witnesses [Abrogated].

(l) Interpreters. The court may appoint a disinterested interpreter of its own selection, including an interpreter for the deaf, and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Interpreters shall be appropriately sworn.

## RULE 44. PROOF OF OFFICIAL RECORD

(a) Authentication.

(1) *Domestic.* An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by a person purporting to be the officer having the legal custody of the record, or the officer's deputy. If the official record is kept without the state, the copy shall be accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by that seal.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or entry or lack of entry therein by any other method authorized by law.

## RULE 44A. DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice in that party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Maine Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

## RULE 45. SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things, or permit inspection of premises, in the possession, custody or control of that person at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena for the Superior Court may issue from the court in any county, and for the District Court from the court in any district.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to the Maine Bar may also issue and sign a subpoena as officer of the court.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age, including the attorney of a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. Prior notice of any commanded production of documents and things or inspection of premises or the appearance of a witness in discovery or pretrial proceedings shall be served on each party in the manner prescribed by Rule 5(b) at least 14 days prior to the response date set forth in the subpoena. A party shall have 7 days to

object to a discovery or pretrial subpoena and to arrange for the determination of the objection by the court. Subpoenas commanding the appearance of a witness or the production of documents or things at trial or hearing shall be served on each party in the manner prescribed by Rule 5(b).

(2) A subpoena may be served at any place within the state.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court for which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, a reasonable attorney fee, and other reasonable expenses incurred in seeking the sanction.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena a written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of any justice or judge of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow a reasonable time for compliance;

(ii) requires a resident of this state who is not a party or an officer of a party to travel to attend a deposition outside the county wherein that person resides or is employed or transacts business in person or a distance of more than 100 miles one way, whichever is greater, unless the court otherwise orders; requires a nonresident of the state who is not a party or an officer of a party to attend outside the county wherein that person is served with a subpoena, or farther than 100 miles from the place of service, unless some other convenient place is fixed by an order of court;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles one way to attend trial,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to a Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Motions and Objections. Motions or objections concerning subpoenas issued in discovery or pretrial proceedings shall be made under Rule 26(g). Motions or objections concerning subpoenas issued to command appearance or production of documents or tangible things at trial or hearing shall promptly be directed first to the judge or justice presiding at such trial or hearing.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court in which the action is pending or in the county in which the deposition is taken. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A). Punishment for contempt under this subdivision (f) shall be in accordance with Rule 66 and 16 M.R.S.A. § 102.

## RULE 46. PRESERVING OBJECTIONS.

Objections to rulings admitting or excluding evidence and other rulings or orders of the court shall be made, preserved and appealed in accordance with Maine Rules of Evidence, these Rules and any applicable statutes.

Exceptions to rulings or orders of the court shall not be made. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice that party.

## RULE 47. JURORS

(a) Examination of Jurors. The court shall conduct the examination of prospective jurors unless in its discretion it permits the parties or their attorneys to do so. The court shall permit the parties or their attorneys to suggest additional questions to supplement the inquiry and shall submit to the prospective jurors such additional questions as it deems proper, or the court in its discretion may permit the parties or their attorneys themselves to make such additional inquiry as it deems proper.

(b) Challenges for Cause. Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the examination.

(c) Peremptory Challenges.

(1) *Manner of Exercise.* After all jurors challenged for cause have been excused, the clerk shall draw the names of eight prospective jurors and shall draw one additional name for each peremptory challenge allowed to any party by this rule or by the court. Peremptory challenges shall be exercised by striking out the name of the juror challenged on a list of the drawn prospective jurors prepared by the clerk. Any party may waive the exercise of any peremptory challenges without thereby relinquishing the right to exercise any remaining peremptory challenge or challenges to which that party is entitled. If all peremptory challenges are not exercised, the court will strike from the bottom of the list sufficient names to reduce the number of jurors remaining to eight.

(2) *Order of Exercise.* In any action in which both sides are entitled to an equal number of peremptory challenges, they shall be exercised one by one, alternatively, with the plaintiff exercising the first challenge. In any action in which the court allows several plaintiffs or several defendants additional peremptory challenges, the order of challenges shall be as determined by the court.

(3) *Number.* Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purpose of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

(d) Alternate Jurors. The court may direct that not more than three jurors in addition to the regular panel be called and impaneled to sit as alternate jurors as provided by law. The manner and order of exercising peremptory challenges to

alternate jurors shall be the same as provided for peremptory challenges of regular jurors. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by this rule if one or two alternate jurors are to be impaneled, and two peremptory challenges if three alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this rule shall not be used against an alternate juror.

(e) Note-Taking by Jurors. The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

## RULE 48. MAJORITY VERDICT; STIPULATIONS AS TO NUMBER

(a) Majority Verdict. A number of jurors equal to at least two-thirds of the total number of jurors serving on a jury may agree on a verdict or any finding submitted to the jury and return it into court as the verdict or finding of the jury, unless otherwise agreed by the parties in accordance with subdivision (b) of this rule. The court shall so instruct the jury.

(b) Number of Jurors. All civil trials by jury shall be to juries consisting of eight or nine jurors unless the parties thereto stipulate that the jury may consist of any number of jurors less than eight. The parties may also stipulate that the verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. Any stipulation as to the number of the jury shall also provide whether and by what amount the number of peremptory challenges to be allowed shall be reduced.

Unless stipulated by the parties, no jury shall be seated with less than eight members. Where personal emergency or disqualification causes a juror to be excused after the jury is seated, no verdict may be taken from a jury reduced to fewer than seven members, unless stipulated by the parties.

## RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

## RULE 50. JUDGMENT AS A MATTER OF LAW

(a) Judgment as a Matter of Law in an Action Tried by Jury. In an action tried to a jury, a motion for judgment as a matter of law on any claim may be made at any time before submission of the case to the jury. The motion shall specify the

claim or claims as to which judgment is sought and the issue or issues as to which it is contended that the law and the facts entitle the moving party to judgment. Before considering the motion, the court shall ascertain that the party opposing the motion has been fully heard with respect to the issue or issues raised. The court may grant the motion as to any claim if the court determines that, viewing the evidence and all reasonable inferences therefrom most favorably to the party opposing the motion, a jury could not reasonably find for that party on an issue that under the substantive law is an essential element of the claim.

(b) Renewal of Motion for Judgment as a Matter of Law After Trial. Whenever a motion for judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed in open court or by service and filing not later than 10 days after entry of judgment. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned the court may direct the entry of judgment as a matter of law or may order a new trial.

(c) Disposition of Appeal From Grant or Denial of Motion After Trial. If on appeal the Law Court finds that the court has erroneously entered a judgment as a matter of law after trial, it may reinstate any verdict and direct the entry of judgment thereon. If on appeal the Law Court finds that the court has erroneously denied the motion for judgment as a matter of law after trial, it may itself direct the entry of such judgment or order a new trial.

(d) Motion for Judgment as a Matter of Law in Nonjury Case. In an action tried by the court without a jury, a motion may be made at any time for judgment as a matter of law on any claim. The motion shall specify the claim or claims as to which judgment is sought and the issue or issues as to which it is contended that the law and the facts entitle the moving party to judgment. Before considering the motion, the court shall ascertain that the party opposing the motion has been fully heard with respect to the issue or issues raised. If the court finds against the party opposing the motion on any issue that under the substantive law is an essential element of any claim, the court may enter judgment as a matter of law against that party on that claim. Alternatively, the court may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits, the court shall upon request make findings as provided in Rule 52(a).

## RULE 51. ARGUMENT OF COUNSEL; INSTRUCTIONS TO JURY

(a) Time for Argument. Counsel for each party shall be allowed such time for argument as the court shall order. Counsel for the moving party shall argue first. Opposing counsel shall then argue. Counsel for the moving party shall be allowed time for rebuttal. When multiple claims or multiple parties are involved in an action, the order and division of the arguments shall be subject to the direction of the court.

(b) Instructions to Jury; Objections. In an action tried to a jury, at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(c) Summing Up and Comment by Court. In an action tried to a jury, at the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence, but shall not during the trial, including the charge, express an opinion upon issues of fact. Upon timely objection by an aggrieved party such an expression of opinion is sufficient cause for a new trial.

## RULE 52. FINDINGS BY THE COURT

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Superior Court justice or, if an electronic recording was made in the District Court, the District Court judge, shall, upon the request of a party made as a motion within 5 days after notice of the decision, or may upon its own motion, find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment if it differs from any judgment that may have been entered before such request was made; provided that, in every action for termination of parental rights, the court shall make findings of fact and state its conclusions of law thereon whether or not requested by a party. In granting or refusing interlocutory injunctions the court shall similarly on such request set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of

fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 50(d).

(b) Amendment. The court may, upon motion of a party made not later than 10 days after notice of findings made by the court, amend its findings or make additional findings and, if judgment has been entered, may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

## RULE 53. REFEREES

(a) Appointment and Compensation. The court in which an action is pending may appoint one or more referees therein, not exceeding three in number. As used in these rules "referee" includes a master and an auditor, and the singular includes the plural. The compensation to be allowed to a referee shall be fixed by the court, and such compensation and necessary expenses incurred by a referee as allowed by the court shall be paid by the state on presentation of the proper certificate of the clerk, or by such of the parties, or out of any fund or subject matter of the action, which is in the custody and control of the court, or by apportionment among such sources of payment, as the court shall direct. The referee shall not retain the report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.

(b) Reference.

(1) *Reference by Agreement.* The court may appoint a referee in all cases where the parties agree that the case may be so tried.

(2) *Reference Without Agreement.* In absence of agreement of the parties, a reference shall be the exception and not the rule. In actions to be tried by

a jury, a reference shall be made only when an investigation of accounts or an examination of vouchers is required; in an action to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the referee may specify or limit the referee's powers and may direct the referee to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the referee's report. When a party so requests, the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 103 of the Maine Rules of Evidence for a court sitting without a jury.

(d) Witnesses. The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished by the court as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(e) Report.

(1) *Contents and Filing.* The referee shall prepare a report upon the matters submitted to the referee by the order of reference and, if required to make findings of fact and conclusions of law, the referee shall set them forth in the report. In cases where the reference is by agreement of the parties, the referee shall file with the clerk of the court the report, together with the original exhibits and together with any transcript which, at the election and expense of one or more of the parties, may be made of the proceedings and of the evidence before the referee. In cases where the reference is without agreement and where the action is to be tried without a jury, when the order of reference so provides, the referee shall file with the report and the original exhibits a transcript of the proceedings and of the evidence and the cost of such transcript shall be included in the necessary expenses incurred by the referee as provided in Rule 53(a). The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Non-jury Actions.* In an action where there has been a reference by agreement, the referee's conclusions of law and findings of fact shall be subject to the right of the parties to object to acceptance of the referee's report. On waiver by all parties of the right to object to acceptance of the referee's report, the court

shall forthwith enter judgment on the referee's report. Except where such waiver occurs, any party may within 10 days after being served with notice of the filing of the report serve written objections upon the other parties. Application to the court for action upon the report and upon objections thereto, if any have been served, shall be by motion and upon notice as prescribed in Rule 7(b). The court shall adopt the referee's findings of fact unless clearly erroneous. Except as otherwise provided in this paragraph (2), the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. If no objections have been timely filed, the court shall forthwith enter judgment on the referee's report.

(3) *In Jury Actions.* In an action to be tried by a jury the referee shall not be directed to report the evidence. The referee's findings upon the issues submitted to the referee are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Draft Report.* Before filing a report a referee may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(5) *Amendment.* On motion of a party made not later than five days after notice of filing of the report, the referee may amend the findings or recommendations or make additional findings or recommendations. The referee shall file a supplemental report containing any amended or additional findings or recommendations or denying the motion, in the manner provided for filing the original report in paragraph (1) of this subdivision. Within ten days after being served with notice of the filing of a supplemental report, any party may serve written objections to the original or the supplemental report as provided in paragraph (2) of this subdivision.

## VII. JUDGMENT

### RULE 54. JUDGMENTS; COSTS

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties; Attorney Fees.

(1) Except as otherwise provided in paragraph (2) of this subdivision and in Rule 80(d), when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, except those enumerated in paragraph (2) of this subdivision and in the last sentence of Rule 80(d), which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(2) In an action in which there is a claim for attorney fees, a judgment entered on all other claims shall be final as to those claims unless the court expressly finds that the claim for attorney fees is integral to the relief sought. If the court so finds, any order or other form of decision, however designated, shall not terminate the action as to any claim and is subject to revision at any time before the entry of a final judgment adjudicating all claims including that for attorney fees.

(3) When final judgment has been entered on all claims except a claim for attorney fees, an application for the award of attorney fees shall be filed within 60 days after entry of judgment if no appeal has been filed. If an appeal has been filed, the application may be filed and acted upon in the trial court at any time after entry of the judgment appealed from and in any case shall be filed not later than 30 days after final disposition of the action. An application for attorney fees shall ordinarily be acted upon by the justice or judge who rendered the judgment on the merits.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every judgment shall grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in his pleadings.

(d) Allowance of Costs. Costs shall be allowed as of course to the prevailing party, as provided by statute and by these rules, unless the court otherwise specifically directs.

(e) Taxation of Costs. Costs shall be taxed by the clerk upon a bill to be made out by the party entitled to them or, if no such bill is presented, upon inspection of the proceedings and files. If the adverse party has notified the clerk in writing of a desire to be present at the taxation of costs, no costs shall be taxed without notice to such adverse party.

(f) Schedule of Fees. The following schedule of fees shall be taxable as costs: Costs and fees as allowed to a party or witness by statute or administrative order. Service as taxed by the officer or process server, subject to correction. Surveyors, commissioners and other officers appointed by the court, fees as charged by them subject to correction. Costs of reference as reported by the referee, and allowed by a justice of the court.

(g) Costs on Depositions. The taxing of costs in the taking of depositions shall be subject to the discretion of the court. No costs shall be allowed unless the court finds that the taking of the deposition was reasonably necessary, whether or not the deposition was actually used at trial. Taxable costs may include the cost of service of subpoena upon the deponent, the reasonable fee of the officer before whom the deposition is taken, the stenographer's reasonable fee for attendance, and the cost of the original transcript and one copy of the testimony or such part thereof as the court may fix and, for depositions used at trial in lieu of live testimony, a reasonable fee for appearance by any expert and costs incident to preparing, editing and presenting the deposition at trial.

## RULE 54A. COURT FEES

The fees of the Maine Courts are established by the Supreme Judicial Court and shall be published in a Fee Schedule.

## RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Subject to the limitations of Rule 54(c), judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk shall, upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not a minor or incompetent person, enter judgment for that amount and costs against the defendant, if the defendant has been defaulted and has failed to appear.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian, guardian ad litem, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment in the same manner and subject to the same response requirements as for motions pursuant to Rule 7; provided that, if the reason for default is a party's failure to appear at trial, such notice need be served only if ordered by the court. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall in the Superior Court accord a right of trial by jury to the plaintiff if the plaintiff so requests.

(3) *Judgment on Negotiable Obligation.* No judgment by default shall be entered upon a claim based on a negotiable instrument or other negotiable obligation unless an original or copy of the instrument or obligation is filed with the clerk or unless the court for cause shown shall otherwise direct on such terms as it may fix.

(4) *Affidavit Required.* Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by the plaintiff or the plaintiff's attorney, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in Article I of the "Soldiers' and Sailors' Civil Relief Act" of 1940, as amended, except upon order of the court in accordance with that Act, and setting forth facts showing that venue was properly laid at the place where the action was brought.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

(e) Collections Fee. A request or motion for a default that seeks a judgment for a sum certain, or for a sum that can, by computation of costs and interest, be made certain, shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the request or motion is filed. The fee payment requirement shall apply only when a judgment of $10,000 or more is sought.

## RULE 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. A motion for summary judgment may not be filed until the expiration of 20 days from the commencement of the action.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, but within such time as not to delay the trial, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Proceedings on Motion. Any party opposing a motion may serve opposing affidavits as provided in Rule 7(c). Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by subdivision (h) show that there is no genuine issue as to any material fact set forth in those statements and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(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.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(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), & (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 and shall be supported by a record citation as required by paragraph (4) of this rule.

(2) Opposing Statement. A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise opposing statement. 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 response limited to 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.

(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.

## RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to 14 M.R.S.A. §§ 5951-5963 shall be in accordance with these rules, and the right to trial by jury is preserved under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

## RULE 58. ENTRY OF JUDGMENT

Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by the clerk of the direction; but when the court directs entry of judgment for other relief, the court shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket in accordance with Rule 79(a) constitutes the entry of the judgment. Any judgment or other order of the court is effective and enforceable upon signature by the court, or if not signed by the court, then upon entry of the judgment in the civil docket. The date of entry of the judgment or order shall govern time calculations pursuant to these rules or applicable statutes. The entry of the judgment shall not be delayed for the taxing of costs.

## RULE 59. NEW TRIALS: AMENDMENT OF JUDGMENTS

(a) Grounds. The justice or judge before whom an action has been tried may on motion grant a new trial to all or any of the parties and on all or part of the issues for any of the reasons for which new trials have heretofore been granted in actions at law or in suits in equity in the courts of this state. A new trial shall not be granted solely on the ground that the damages are excessive until the prevailing party has first been given an opportunity to remit such portion thereof as the court judges to be excessive. A new trial shall not be granted solely on the ground that the damages are inadequate until the defendant has first been given an opportunity to accept an addition to the verdict of such amount as the court judges to be reasonable. On a motion for a new trial in an action tried without a jury, the justice or judge before whom the action has been tried may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days

after such service within which to serve opposing affidavits, which period may be extended for an additional period either by the justice or judge before whom the action has been tried for good cause shown or by the parties by written stipulation. Such justice or judge may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the justice or judge before whom the action has been tried without motion of a party may order a new trial for any reason for which the justice or judge might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. A motion for reconsideration of the judgment shall be treated as a motion to alter or amend the judgment.

(f) Unavailability of Transcript. When any material part of a transcript of the evidence taken cannot be obtained because of an official Court Reporter's death or disability, or because of a technical failure of an electronic transcription, the justice or judge before whom the action has been tried may on motion, if the justice or judge is satisfied that the lack of such transcript prevents a party from effectively prosecuting an appeal, set aside any judgment entered in the action and grant a new trial.

## RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Superior Court or Law Court, and thereafter while the appeal is pending may be so corrected with leave of the Superior Court or Law Court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or

excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of bills of review are abolished as means of reopening judgments entered under these rules, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

## RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

## RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(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 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.

(b) Stay of Execution on Default Judgment. Execution in a personal action shall not issue upon a judgment by default against an absent defendant who has no actual notice thereof until one year after entry of the judgment except as provided by law.

(c) Order for Immediate Execution. In its discretion, the court on motion may, for cause shown and subject to such conditions as it deems proper, order execution to issue at any time after the entry of judgment and before an appeal from the judgment has been taken or a motion made pursuant to Rule 50, 52(b), 59, or 60; but no such order shall issue if a representation, subject to the obligations set forth in Rule 11, is made that a party intends to appeal or to make such motion. When an order for immediate execution under this subdivision is denied, the court may, upon a showing of good cause, at any time prior to appeal or during the pendency of an appeal order the party against whom execution was sought to give bond in an amount fixed by the court conditioned upon satisfaction of the damages for delay, interest, and costs if for any reason the appeal is not taken or is dismissed, or if the judgment is affirmed.

(d) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(e) Stay Upon Appeal. Except as provided in subdivisions (c) and (d) of this rule, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal, and no supersedeas bond or other security shall be required as a condition of such stay.

(f) Continuance of Attachment. An attachment of real or personal property or an attachment on trustee process or a bond given to vacate any such attachment or to release the defendant from arrest on capias writ shall, unless dissolved by operation of law, continue during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment has become final by expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the Superior Court or Law Court, any such attachment

or bond shall continue for 60 days if the judgment is for the plaintiff but shall be dissolved forthwith if the judgment is for the defendant.

(g) Power of Reviewing Court Not Limited. The provisions in this rule do not limit any power of the Superior Court or Law Court during the pendency of an appeal to suspend, modify, restore, or grant an injunction or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

## RULE 63. INABILITY OF A JUDGE TO PROCEED

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

# VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

## RULE 64. REPLEVIN

(a) Availability of Replevin. A plaintiff claiming the possession of goods wrongfully taken or detained may replevy the goods on writ of replevin as provided by this rule or by law, provided that the value of the goods sought to be replevied is within the subject-matter jurisdiction of the court.

(b) Writ of Replevin: Form. The writ of replevin shall bear the signature or facsimile signature of the clerk, be under seal of the court, contain the name of the court, the names and residences of the parties and the date of the complaint, be directed to the sheriff or the sheriff's deputies of the county within which the goods are located, and command them to replevy the goods, which shall be

described with reasonable particularity and their respective values stated. The writ of replevin shall also state the name of the justice or judge who entered the order approving the writ of replevin and the amount of the replevin bond and the date of the order.

(c) Same: Service. No writ of replevin shall be executed unless both it and the amount of the replevin bond are approved by order of the court. Except as provided in subdivision (h) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that it is more likely than not that the plaintiff will prevail in the replevin action and that the amount of the replevin bond is twice the reasonable value of the goods and chattels to be replevied.

A replevin action may be commenced only by filing the complaint with the court, together with a motion for approval of the writ of replevin and the amount of the replevin bond. The motion shall be supported by affidavit or affidavits setting forth specific facts sufficient to warrant the required finding and shall be upon the affiant's own knowledge, information and belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Except as provided in subdivision (h) of this rule, the motion and affidavits or affidavits with notice of hearing thereon shall be served upon the defendant in the manner provided in Rule 4 at the same time the summons and complaint are served upon that defendant.

A defendant opposing a motion for approval of a writ of replevin shall file material in opposition as required by Rule 7(c). If the defendant is deemed to have waived all objection to the motion as provided in Rule 7(c) for failure to file the opposition material within the time therein provided or as extended, the court shall, without hearing, upon a finding that the plaintiff is entitled to a writ of replevin under the terms of this subdivision (c), enter an order of approval of the writ.

The writ of replevin may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (b) of this rule. The plaintiffs' attorney shall deliver to the officer replevying the goods the original writ of replevin upon which to make the officer's return and shall attach thereto the bond required by law and a copy of the writ of replevin and bond for service on the defendant. The officer shall forthwith cause the goods to be replevied and delivered to the plaintiff. Thereupon the defendant shall be served, in the manner provided in either Rule 4 or Rule 5, with a copy of the writ of replevin and bond, with the officer's endorsement thereon of the date of execution of the writ.

(d) Allegations of Demand and Refusal; Title. If the action is for a wrongful detention only, a demand and refusal of possession before beginning the action shall be alleged by the plaintiff in replevin. Where the title to the goods of the plaintiff in replevin rests upon the title of a third person or upon a special property, the facts shall be alleged.

(e) Defenses; Counterclaim. All defenses shall be made by answer. If the defendant in replevin claims title to the goods or relies upon the title of a third person or upon a special property, the answer shall so state. All claims by the defendant in replevin for a return of the goods, or for damages, or a lien in an amount within the subject-matter jurisdiction of the court, shall be made by counterclaim or answer.

(f) Replevin on Counterclaim, Cross-Claim or Third-Party Complaint. Goods may be replevied on writ of replevin by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim, provided that the goods are located within the county where the action is pending and the value of the goods is within the subject-matter jurisdiction of the court.

(g) Equitable Replevin. These rules shall not be construed to extend or limit the availability of equitable replevin.

(h) Ex Parte Orders Approving Replevin. An order approving a writ of replevin and the amount of the replevin bond may be entered ex parte upon findings by the court that it is more likely than not that the plaintiff will prevail in the replevin action and that the amount of the replevin bond is twice the reasonable value of the goods and chattels to be replevied, and that either (i) the person of the defendant is not subject to the jurisdiction of the court in the action; or (ii) there is a clear danger that the defendant if notified in advance of replevin of the property will remove it from the state or conceal it; or (iii) there is immediate danger that the defendant will damage or destroy the property to be replevied. The motion for such ex parte order, in the filing of which the plaintiff's attorney shall be subject to the obligations of Rule 11, shall be supported by affidavit or affidavits meetings the requirements set forth for affidavits in subdivision (c) of this rule. The hearing on the motion shall be held forthwith after the filing of the complaint.

(i) Return of Property Replevied on Ex Parte Order. On 2 days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant from

whom property has been replevied pursuant to an ex parte order entered under subdivision (h) of this rule may appear, without thereby submitting to the personal jurisdiction of the court, and move the return of the property replevied, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing herein shall be construed to abolish or limit any means, otherwise available by law, for obtaining return of the replevied property or damages or a lien, or for obtaining an adjudication of the rights of the parties in the replevied property.

## RULE 65. INJUNCTIONS

(a) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. The verification of such affidavit or verified complaint shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry as the court fixes, unless within the time so fixed the order, for good cause shown, is extended or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that

event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) Preliminary Injunction.

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party. The application for preliminary injunction may be included in the complaint or may be made by motion.

(2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, provided, however, that for good cause shown and recited in the order, the court may waive the giving of security.

A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) Form and Scope of Restraining Order or Injunction. Every restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their

officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Statutes. These rules do not modify any statute relating to temporary restraining orders and preliminary injunctions in domestic relations actions, actions affecting employer and employee or any other actions where an injunctive proceeding is conducted according to statute.

(f) Presentation to Other Justice or Judge. When an application for an injunction or for an order or decree under this rule is made to one justice or judge and has been acted upon by that justice or judge, it shall not be presented to any other justice or judge except by consent of the first justice or judge which may be oral.

## RULE 66. CONTEMPT PROCEEDINGS

**(a) In General.**

(1) *Purpose and Scope.* This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive and remedial sanctions for contempt. This rule shall not apply to the imposition of sanctions specifically authorized by other provisions of these rules or by statute.

(2) *Definitions.* For purposes of this rule:

(A) "Contempt" includes but is not limited to:

(i) disorderly conduct, insolent behavior, or a breach of peace, noise or other disturbance or action which actually obstructs or hinders the administration of justice or which diminishes the court's authority; or

(ii) failure to comply with a lawful judgment, order, writ, subpoena, process, or formal instruction of the court.

(B) A punitive sanction is a sanction imposed to punish a completed act of contempt or to terminate any contempt which obstructs the administration of justice or diminishes the court's authority.

(C) A remedial sanction is a sanction imposed to coerce the termination of an ongoing contempt or to compensate a party aggrieved by contempt.

(D) A summary proceeding is as described in subdivision (b).

(E) A plenary proceeding is as described in subdivisions (c) and (d).

(F) "Court" means a Judge of the District, Probate or Administrative Court or a Justice of the Superior or Supreme Judicial Court.

(3) *Designation of Appropriate Proceeding.* The court or the moving party must designate the nature of the contempt claimed and the sanctions sought. Where both punitive and remedial sanctions are being sought, the court must use procedures for punitive sanctions.

**(b) Summary Proceedings.**

(1) *Applicability.* A summary proceeding under this subdivision may be used when punitive or remedial sanctions are sought for contempt occurring in the actual presence of the court and seen or heard by the court.

(2) *Procedure.* A contempt may be punished summarily if the court certifies that the court saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. Before imposition of sanctions the court shall allow the alleged contemnor an opportunity to be heard in defense and mitigation.

If the court finds that the alleged contemnor committed the contempt, the court shall issue a written order that directly or by incorporation of the record:

(A) specifies the conduct constituting the contempt;

(B) certifies that the conduct constituting contempt occurred in the presence of the court and was seen or heard by the court;

(C) contains the sanction imposed.

(3) *Punitive Sanctions.* The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In a summary proceeding the court may impose a punitive sanction that consists of either imprisonment for a definite period not to exceed 30 days or a fine of a specified amount not to exceed $5000 or a combination of imprisonment and fine.

(4) *Remedial Sanctions.* The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) *Appeal.* A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

**(c) Plenary Proceedings for Punitive Sanctions.**

(1) *Applicability.* A plenary proceeding under this subdivision must be used when punitive sanctions are sought for contempt occurring outside the presence of the court. A proceeding under this subdivision may be used when punitive sanctions are sought for contempt occurring in the presence of the court and must be used when a punitive sanction in excess of that provided in subdivision (b), paragraph (3) is contemplated.

(2) *Procedure.* A proceeding under this subdivision shall proceed as provided by the Maine Rules of Criminal Procedure for the prosecution of a Class D crime, except as hereinafter provided.

(A) Initiation. A proceeding under this subdivision is initiated by the court on its own motion or at the suggestion of a party.

(B) Request for Prosecution. The court may request that an attorney for the state prosecute the proceeding. If that request is refused, the court may appoint a disinterested member of the bar to act as prosecutor.

(C) Complaint. The prosecuting attorney shall draft a complaint and summons which shall be served upon the alleged contemnor in accordance with the Maine Rules of Criminal Procedure. The complaint shall

(i) state the essential facts constituting the contempt and whether remedial as well as punitive sanctions are sought; and

(ii) specify the time and place of a hearing.

(D) Trial. The date of trial shall allow the alleged contemnor a reasonable time for the preparation of a defense. Trial shall be to the court, except that, if the court concludes that in the event of an adjudication of contempt a punitive sanction of imprisonment of more than 30 days or a serious punitive fine may be imposed, trial shall be to a jury unless waived by the alleged contemnor.

(E) Failure to Appear. An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant.

(3) *Punitive Sanctions.* The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In order to impose a punitive sanction, the court must find beyond a reasonable doubt that

(A) the alleged contemnor has intentionally, knowingly or recklessly failed or refused to perform an act required or has done an act prohibited by a court order; and

(B) it was within the alleged contemnor's power to perform the act required or refrain from doing the prohibited act.

(4) *Remedial Sanctions.* The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) *Appeal.* A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

**(d) Plenary Proceedings for Remedial Sanctions.**

(1) *Applicability.* Unless remedial sanctions are sought in plenary punitive proceedings under subdivision (c) of this rule, a plenary remedial proceeding under this subdivision must be used when remedial sanctions are sought for contempt occurring outside the presence of the court. A proceeding under this subdivision may be used when remedial sanctions are sought for contempt occurring in the presence of the court.

(2) *Procedure.*

(A) Initiation. A proceeding under this subdivision, or a request for remedial sanctions in a proceeding under subdivision (b) or (c) of this rule, is initiated by the court on its own motion or at the suggestion of a party. The motion of a party shall be under oath and set forth the facts that give rise to the motion or shall be accompanied by a supporting affidavit setting forth the relevant facts.

(B) Notice. The court shall set the matter for hearing on oral testimony, depositions, or affidavits and shall order that a contempt subpoena be served on the alleged contemnor. The subpoena shall set forth the title of the action and the date, time, and place of the hearing and shall allow the alleged contemnor a reasonable time to file an answer and prepare a defense. The subpoena may include an order to request documents requested by the moving party. The subpoena shall contain a warning that failure to obey it may result in arrest and that if the court finds the alleged contemnor to have committed contempt, the court may impose sanctions that may include fines and imprisonment, or both.

(C) Service. The contempt subpoena shall be served with a copy of the court order or of the motion and any supporting affidavit upon the alleged contemnor. Service upon an individual shall be made in hand by an officer qualified to serve civil process. Service upon a party that is not an individual shall be made by any method by which service of a civil summons may be made. Service shall be completed no less than 10 days prior to the hearing unless a shorter time is ordered by the court.

(D) Hearing. All issues of law and fact shall be heard and determined by the court. The alleged contemnor shall have the right to be heard in defense and mitigation. In order to make a finding of contempt, the court must find by clear and convincing evidence that:

(i) the alleged contemnor has failed or refused to perform an act required or continues to do an act prohibited by a court order, and

(ii) it is within the alleged contemnor's power to perform the act required or cease performance of the act prohibited.

(E) Failure to Appear. An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant and may be subject to a default judgment.

(F) Order. In the event that the court makes a finding of contempt, the court shall issue an order which specifies the sanction to be imposed.

(G) Appeal. A person upon whom a remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Civil Procedure.

(3) *Remedial Sanctions.* The court may impose any of the following sanctions on a person adjudged to be in contempt in a proceeding seeking remedial sanctions. The court may also order such additional relief as has heretofore been deemed appropriate to facilitate enforcement of orders, such as appointment of a master or receiver or requirement of a detailed plan or other appropriate relief. An order containing a remedial sanction shall contain a clear description of the action that is required for the contemnor to purge the contempt.

(A) Coercive Imprisonment. A person adjudged to be in contempt may be committed to the county jail until such person performs the affirmative act required by the court's order.

(B) Coercive Fine. A person adjudged to be in contempt may be assessed a fine in a specific amount, to be paid: (i) unless such person performs an affirmative act required by the court's order; or (ii) for each day that such person fails to perform such affirmative act or continues to do an act prohibited by the court's order.

(C) Compensatory Fine. In addition to, or as an alternative to, sanctions imposed under subparagraph (A) or (B) of this paragraph, if loss or injury to a party in an action or proceeding has been caused by the contempt, the court may enter judgment in favor of the person aggrieved for a sum of money sufficient to indemnify the aggrieved party and to satisfy the costs and disbursements, including reasonable attorney fees, of the aggrieved party.

## RULE 67. DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. In the Superior Court, money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of 4 M.R.S.A. § 556. In the District Court, money paid into court under this rule shall be deposited in such depository as the court having custody shall designate (which designation shall be minuted on the docket) and shall be withdrawn therefrom upon order of the clerk, countersigned by any judge.

## RULE 68. OFFER OF JUDGMENT

At any time more than 10 days before the trial begins or within such shorter time as the court may approve, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer or within such shorter time as the court may order the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days, or such shorter time as the court may approve, prior to the commencement of hearings to determine the amount or extent of liability.

## RULE 69. EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. No execution running against the body shall be issued unless, where the law expressly permits such execution, it is so ordered by the court after motion and hearing for good cause shown. In addition to the procedure on execution, in proceedings supplementary to and in aid of a

judgment, and in proceedings on and in aid of execution, as provided by law, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person in the manner provided in these rules; provided that discovery may be obtained against the judgment debtor only in connection with a disclosure proceeding pursuant to 14 M.R.S.A. §§3120-3136 and only upon the order, entered on motion for good cause shown, of the District Court in the division in which such proceeding is pending.

## RULE 70. JUDGMENT FOR SPECIFIC ACTS

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may after notice and opportunity to be heard, direct the act to be done by some other person appointed by the court and the act when so done has like effect as if done by the party, except that the appointee of the court shall have no authority to execute a conveyance of land located outside the State of Maine. The court may also in proper cases adjudge the party in contempt.

## RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, that person may enforce compliance with the order by the same process as if a party; and, when compliance with an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing compliance with the order as if a party.

# IX. APPEALS TO THE LAW COURT

Rules 72 through 76B & 76I

**Rules 72, 73, 74, 74A, 74B, 74C, 75, 75A, 75B, 75C, 75D, 76, 76A, 76B and 76I of the Maine Rules of Civil Procedure have been abrogated. Appeals to the Law Court are now governed by the Maine Rules of Appellate Procedure.**

## IX-A. REMOVAL AND APPEAL FROM THE DISTRICT COURT TO THE SUPERIOR COURT OR THE LAW COURT

## RULE 76C. REMOVAL TO SUPERIOR COURT

**(a) Notice of Removal to the Superior Court for Jury Trial.** Except as otherwise provided in these rules, a defendant or any other party to a civil action or proceeding in the District Court may remove that action to the Superior Court for jury trial in the county in which the division of the District Court is located by filing notice of removal, serving a copy of the notice upon all other parties, and paying to the clerk of the District Court the jury fee. Parties joined as defendants may file jointly or separately for removal. The notice shall be filed within the time for serving the answer or reply or at the time for appearance if no written answer is required. For cases required to have an alternative dispute resolution conference pursuant to Rule 16B, payment of the jury fee shall be made as required by Rule 16B(i).

**(b) Proceedings for Removal**. Upon the filing of the notice of removal and payment of the jury fee required by subdivision (a) of the rule, the clerk shall thereupon file with the Superior Court the record as provided in Rule 76F(a) for appeals, provided that the District Court shall first determine any motions for approval of attachment, trustee process or replevin, pending when the notice of removal was filed. Any order of the District Court entered on such a motion, or any other order of the District Court entered prior to removal, shall remain in force until modified by the Superior Court. If the party giving notice of removal does not comply with the requirements of this rule, the action shall proceed in the District court as if no notice had been filed.

(c) **Proceedings in the Superior Cour**t. Removal shall be deemed complete upon receipt of the record in the Superior Court. The clerk of the Superior Court shall send each counsel of record or unrepresented party a written notice of the docketing of receipt of the record, the Superior Court docket number, and the date of receipt of the record. All filings thereafter shall be made in the Superior Court, and the action shall be prosecuted in the Superior Court as if originally commenced therein. The removal to the Superior Court for trial by jury may be reviewed by the Superior Court on motion. Upon a finding by the Superior Court of improvident removal, the action shall be remanded to the District Court and no fees previously paid shall be refunded.

## RULE 76D. APPEAL TO THE SUPERIOR COURT

This Rule applies only to appeals from District Court judgments which, by law, may be appealed to the Superior Court. It does not apply to direct appeals

from the District Court to the Law Court. Such appeals are governed by the Maine Rules of Appellate Procedure.

Whenever a judgment of the District Court is by law reviewable by the Superior Court, an aggrieved party may appeal from a judgment of the District Court to the Superior Court in the county in which the division of the District Court entering judgment is located. The time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from, except that: (1) upon a showing of excusable neglect the court in any action may extend the time for filing the notice of appeal not exceeding 30 days from the expiration of the original time herein prescribed; and (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subdivision commences to run and is computed from the entry of any of the following orders made upon a timely motion under such rules: making findings of facts or conclusions of law as requested under Rule 52(a); or granting or denying a motion under Rule 52(b); or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59. An appeal from a judgment, whenever taken, preserves for review any claim of error in the record including any claim of error in any of the orders specified in the preceding sentence, even if entered on a motion filed after the notice of appeal. The filing of a motion for any such order does not waive or otherwise render ineffective a previously filed notice of appeal from the same judgment if timely filed, and the time periods for taking any further steps to secure review of the judgment appealed from shall be measured from the date of the entry of such an order on a timely motion. An appeal shall not be dismissed because it is designated as being taken from such an order, but shall be treated as an appeal from the judgment. The appeal shall be taken by filing a notice of appeal with the clerk of the District Court. Rule 73(b) of these rules shall govern the form of the notice of appeal and notification of other parties. The notice of appeal is a pleading for the purposes of Rule 11.

The appeal shall be on questions of law only and shall be determined by the Superior Court without jury on the record on appeal specified in Rule 76F. Any findings of fact of the District Court shall not be set aside unless clearly erroneous.

Within the time for filing the notice of appeal the appellant shall pay to the clerk of the District Court the entry fee in and the cost of forwarding to the

Superior Court the record on appeal specified in Rule 76F. The clerk of the District Court shall then forward the record to the Superior Court. The clerk of the Superior Court shall then promptly enter the appeal. If by accident or mistake the required payment is not made within the time prescribed, the court may, on motion of either party, allow the late payment of the required fees and direct the clerk to enter the appeal in the Superior Court; but attachment or bail shall not thereby be revived or continued.

An appeal may be dismissed by stipulation filed with the clerk, or, after entry in the Superior Court, with the clerk of the Superior Court.

If an appellant fails to comply with the provisions of Rules 76D through 76G within the time prescribed therein, the Superior Court may, on motion of any other party or on its own motion after notice to the parties, dismiss the appeal for want of prosecution.

The Superior Court may enter a judgment reversing or affirming, in whole or in part, the judgment appealed from and shall thereupon remand the case to the District Court from which it originated for entry of the appropriate judgment, or for any further proceedings. If the Superior Court remands the case for further proceedings, all issues raised on the appeal from the District Court shall be preserved in a subsequent appeal taken from a final judgment entered in the action.

## RULE 76E. JOINT OR SEVERAL APPEALS TO THE SUPERIOR COURT

Parties interested jointly, severally, or otherwise in a judgment of the District Court may join in an appeal therefrom; or any one or more of them may appeal separately or any two or more of them may join in an appeal.

## RULE 76F. RECORD ON APPEAL TO THE SUPERIOR COURT

(a) Record to Be Filed in Superior Court. When an appeal is completed, the clerk of the division shall file the record with the Superior Court. The original papers and exhibits filed in the District Court and a copy of the docket entries prepared by the clerk of the District Court, together with any transcript made pursuant to Rule 76H of these rules, shall constitute the record on appeal in all cases. A party must make advance arrangements with the clerk for the transportation and receipt of documents or exhibits of unusual bulk or weight.

The record on appeal prepared in accordance with this subdivision shall be filed in the Superior Court not later than 40 days after the filing of the notice of appeal or 10 days after the filing of any transcript of the proceedings requested in accordance with Rule 76H, whichever occurs later. It shall be the appellant's responsibility to insure that these time limits are met and to provide the clerk such assistance as is necessary in preparing and copying the record for filing in the Superior Court. If the appellant fails to comply with the requirements of this rule, the District Court may on motion of any party or on its own initiative, dismiss the appeal for want of prosecution. Upon showing of good cause, the District Court may increase or decrease the time allowed for filing the record.

Upon receipt of the record from the District Court, the clerk of the Superior Court shall send each counsel of record or unrepresented party a written notice of the docketing of the receipt of the record on appeal, the Superior Court docket number, the date upon which the record was received, the date upon which the appellant's brief is due, and a copy of the briefing schedule required by Rule 76G(a).

(b) Power of Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the District Court judge except as provided in subdivisions (c) and (d) of this rule but, if any difference arises as to whether the record truly discloses what occurred, the difference shall be submitted to and settled by the District Court judge and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the District Court judge, either before or after the record is transmitted to the Superior Court, or the Superior Court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk.

(c) Appeals When No Electronic Recording Was Made. In any case in which electronic recording would be routine or has been timely requested under Rule 76H(a) of these rules, if for reasons beyond the control of any party, no recording, or no transcript thereof, was made, or is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection, for use instead of a transcript. This statement shall be served on the appellee within 10 days after an appeal is taken to the Superior Court, and the appellee may serve objections or propose amendments thereto within 10 days after service upon the appellee. Thereupon the statement, with the objections or proposed amendment, shall be submitted to the court for

settlement and approval and as settled and approved shall be included in the record on appeal filed with the Superior Court.

(d) Record on Agreed Statement. When the questions presented by an appeal to the Superior Court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Superior Court.

The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the District Court judge may consider necessary fully to present the questions raised by the appeal, shall be approved by the District Court judge and shall then be certified to the Superior Court as the record on appeal.

RULE 76G. BRIEFS AND ORAL ARGUMENTS IN THE SUPERIOR COURT

(a) Time for Filing Briefs. The appellant shall file the appellant's brief within 40 days after the date on which the record is filed in the Superior Court, the appellee shall file the appellee's brief within 30 days after service of the brief of the appellant, and the appellant may file a reply brief within 14 days after service of the brief of the appellee. In no event shall any brief be filed less than 6 calendar days before the date set for oral argument. Upon a showing of good cause, the Superior Court may increase or decrease the time limit specified in this subdivision.

(b) Consequence of Failure to File Briefs. If an appellant fails to comply with subdivision (a) of this rule, the Superior Court may dismiss the appeal for want of prosecution. If an appellee fails to comply, the appellee will not be heard at oral argument except by permission of the Superior Court.

(c) Scheduling of Oral Argument. Unless the Superior Court otherwise directs, all appeals shall be in order for hearing 20 days after the date on which appellee's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after the appeal is in order for hearing, and shall notify each

counsel of record or unrepresented party of the time and place at which oral argument will be heard.

## RULE 76H. ELECTRONIC SOUND RECORDING

(a) Recording of Proceedings. The Chief Justice of the Superior Court and the Chief Judge of the District Court shall provide for the electronic sound recording of proceedings in their respective courts by the use of recording equipment to be procured and installed in such manner as they may direct. They may by administrative order in their discretion direct that all proceedings, or certain proceedings, be recorded routinely without special request or order. Any proceedings not routinely recorded shall be recorded at the request of any party in such proceedings or by order of the presiding justice or judge on the court's own motion. Nothing in this rule shall prevent any party or counsel from recording or transcribing such proceedings independently at the expense of that party or counsel, provided, however, that no record or transcription therefrom nor any part thereof, made other than under the authority granted to the Chief Justice or Chief Judge by this rule shall be incorporated in or substituted for any portion of a transcript included in a record on appeal without the consent of all parties to the proceedings and the approval of the presiding justice or judge.

(b) Personnel.

(1) *Operators.* The Chief Justice of the Superior Court and Chief Judge of the District Court shall designate as authorized operators of electronic recording equipment a sufficient number of court personnel to assure that an authorized operator will be available whenever and wherever court is in session. It shall be the responsibility of the Chief Justice and Chief Judge to employ and train personnel in the use of electronic equipment.

(2) *Transcribers.* The Chief Justice and Chief Judge shall appoint a sufficient number of transcribers of electronic recordings to assure that all transcription of such recordings required under this rule is accomplished without unreasonable delay. All persons appointed as transcribers shall be sworn to the faithful discharge of their duties.

(c) Courtroom Operation. The Chief Justice of the Superior Court and the Chief Judge of the District Court shall establish standards and procedures for courtroom operation of electronic recording equipment in their respective courts that will assure a complete and accurate oral recording of all proceedings, as well

as a written record of all information necessary for an accurate transcription. At all times, the operation of the recording equipment shall be subject to the direction and order of the trial justice or judge, provided that the right of any party to have any proceedings recorded shall not thereby be defeated.

(d) Transcription.

(1) *In General.* The Chief Justice of the Superior Court and the Chief Judge of the District Court shall establish standards and procedures for transcription that will assure the timely production of a neat and accurate transcript of any portion of the recorded proceedings transcribed in accordance with this subdivision. They shall by administrative order provide for the ordering by any person or any person's attorney of a transcript of all or any portion of a proceeding to which such person is a party or is otherwise authorized by law to have access.

(2) *Transcript on Appeal.*

A. Appeals to the Law Court. In an appeal from the Superior Court or the District Court to the Law Court, the transcript of proceedings recorded in accordance with this rule shall be ordered and transmitted as provided in M.R. App. P. 5(b)(2) and 6(c).

B. Appeals to the Superior Court. In an appeal from the District Court to the Superior Court if the appellant wishes to include all or any portion of the transcript in the record on appeal, the appellant shall file with the notice of appeal a fully completed transcript order form including a brief description of those portions of the transcript which the appellant intends to include. The appellant shall at the same time order such portions in the manner provided by administrative order pursuant to subdivision (1) of this Subdivision. Payment arrangements for transcripts shall be made as provided by M.R. App. 5(b)(2). Immediately upon completion of the transcript, the office designated by administrative order shall transmit the original of it to the clerk of the District Court for filing and inclusion in the record on appeal. The clerk shall serve notice of such filing upon all parties. If the appellant does not file a description of transcript or does not include the entire transcript in their description, the appellee may, within 10 days after service of the notice of appeal, file a description of transcript and proceed as provided in this subdivision. The clerk of the District Court shall not file the record on appeal with the Superior Court until all portions of the transcript ordered in accordance with this subdivision have been filed. The

party ordering a portion of the transcript shall pay the cost of that portion unless the court otherwise orders. All matters not essential to the decision of the questions presented by the appeal shall be omitted from the transcript. For the inclusion of nonessential matter, the Superior Court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(3) *Correction of Transcript.* If either party claims an error in the transcript, such error may be corrected at any time by agreement of the parties or by order of the court.

(e) Retention of Records. All electronic recordings and written records pertaining to a proceeding shall be retained in the office of the clerk for a period of at least ten days from the entry of judgment or other final disposition. During this period, the clerk shall permit any recording to be heard upon request by any party or counsel in the proceedings in which the recording was made. A reasonable fee, may be charged for hearing a recording. At the conclusion of the 10-day period, such recordings and records shall then be mailed by the clerk to a repository as directed by the Chief Justice or Chief Judge. Such records and recording shall be retained under the jurisdiction of the Chief Justice or Chief Judge for such a period of time from entry of final judgment as they shall determine by administrative order. They shall establish other standards and procedures to assure the orderly transmission, retention and destruction of recordings and records under this subdivision.

RULE 76I. [REPLACED BY MAINE RULES OF APPELLATE PROCEDURE]

## X. SUPERIOR AND DISTRICT COURTS AND CLERKS

### RULE 77. SUPERIOR AND DISTRICT COURTS AND CLERKS

(a) Courts Always Open. The Superior and District Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules. Filings after normal business hours and at places other than appropriate for the venue of the proceeding are governed by Rule 5(g).

(b)(1) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a justice or judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county or division where the action is pending.

(2) Recording. In District Court, 24 hours advance notice is required for recording of any civil proceeding. Except by special order of the court, no record will be made in any court of civil nontestimonial matters.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open during such hours as the Chief Justice of the Superior Court, or Chief Judge of the District Court as the case may be, may designate, on all days except Saturdays, Sundays, and legal holidays, and except such other days as the Chief Justice or Chief Judge may designate. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings that do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in a manner provided for in Rule 5 upon every party who is not in default for failure to appear, and shall make a note in the docket accordingly. In lieu of serving a notice of the docket entry, the clerk may serve a copy of the order or judgment in a manner provided for in Rule 5. Any such service is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in the Maine Rules of Appellate Procedure.

(e) Facsimile Signature of the Clerk. A facsimile of the signature of the clerk imprinted at the clerk's direction upon any summons, writ, subpoena, judgment, order or notice, except executions and criminal process, shall have the same validity as the clerk's signature.

## RULE 78. [RESERVED]

## RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Civil Docket. The clerk shall keep the civil docket, and shall enter therein each civil action to which these rules are applicable. Actions shall be assigned docket numbers. Upon the filing of a complaint with the court, the name of each party and each trustee, and the name and address of the plaintiff's attorney shall be entered upon the docket. Thereafter the name and address of the attorney appearing or answering for any defendant or trustee shall similarly be entered. All pleadings and motions addressed in Rule 7(a) and (b), and any opposition thereto and any returns showing execution of process filed with the clerk, and all appearances, fee payments, orders, verdicts, and judgments shall be noted chronologically upon the docket and shall be marked with the docket number. These notations shall briefly show the nature of each document filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. In the alternative the notation of an order or judgment may consist of an incorporation by reference of a designated order, judgment, opinion or other document filed with the clerk by the court, provided that the notation shows that it is made at the specific direction of the court. The notation of an order or judgment shall show the date the notation is made.

(b)(1) Motion to Impound. Upon the filing of a motion or other request to impound or seal documents or other materials, the clerk shall separate such materials from the publicly available file and keep them impounded or sealed pending the court's adjudication of the motion.

(2) Confidential Materials. Requests for inspection or copying of materials designated as confidential, impounded or sealed within a case file must be made by motion in accordance with Rule 7.

(c) Custody of Papers by Clerk. The clerk shall be answerable for all records and papers filed with the court, and they shall not be taken from the clerk's custody without special order of the court; but the parties may at all times have copies.

(d) Other Books and Records. The clerk shall keep such other books and records as may be required from time to time by the Chief Justice of the Superior Court, or the Chief Judge of the District Court, as the case may be.

## XI. SPECIAL RULES FOR CERTAIN ACTIONS

**[Effective January 1, 2009, Rule 80 is abrogated and replaced by Chapter XIII of these Rules.]**

### RULE 80. [Abrogated]

### RULE 80A. REAL ACTIONS

(a) Applicability. Writs of entry are abolished, and these Rules of Civil Procedure shall govern the procedure in real actions including actions in the District Court to quiet title to real estate under 14 M.R.S.A. §§ 6651-6658 and 36 M.R.S.A. § 946, except as otherwise provided in this rule.

(b) Commencement of Action; Service. An action to recover any estate in fee simple, in fee tail, for life, or for any term of years shall be commenced by complaint and service of summons as in other civil actions.

(c) Complaint. The demanded premises shall be clearly described in the complaint. The plaintiff shall declare on the plaintiff's own seizin within 20 years then last past, without naming any particular day or averring a taking of the profits, and shall allege a disseizin by the defendant. The plaintiff shall set forth the estate which the plaintiff claims in the premises, but if the plaintiff proves a lesser estate than the plaintiff has alleged, amendment may be made to conform to the proof and judgment ordered accordingly. The plaintiff need not state in the complaint the origin of the plaintiff's title, but the court may, on motion of the defendant, order the plaintiff to file a statement of the plaintiff's title and its origin. The complaint shall include any claim against the defendant for damages which have accrued at the time of commencement of the action for the rents and profits of the premises or for any destruction or waste of the buildings or other property for which the defendant is by law answerable.

(d) Answer. All defenses shall be made by answer as in other actions. The defendant may defend for a part only of the premises, and when for a part only, it shall be described in the answer with like certainty as is required in the complaint. If the defendant defends for a part only, the plaintiff shall, subject to the provisions of Rule 54(b), have judgment against the defendant on the pleadings for recovery of possession of the part not defended. If the defendant by answer alleges that the defendant has been in possession of a tract of land lying in one body for 6 years or more before the commencement of the action, that only part of it is demanded, and that the plaintiff has as good a title to the whole as to such part, proof of that fact shall defeat the action unless the complaint is amended so as to include the whole tract, which the court may allow without costs. A defendant not in possession of the premises when the action was commenced may defeat the action by disclaiming in the answer any right or title to the premises.

(e) No Abatement by Death or Intermarriage. No real action shall be abated by the death or intermarriage of either party after it has been commenced. The court shall proceed to try and determine such action, but only after such notice as the court orders has been given to all persons interested in his estate.

(f) Judgment. The judgment shall declare the estate, if any, in all or in any part of the demanded premises to which the plaintiff is entitled; and if the plaintiff shall recover judgment for title and possession of all or any part of the demanded premises, the court may order one or more writs of possession to issue in accordance with law. If either party dies before a writ of possession is executed or the action is otherwise disposed of, any money payable by the defendant may be paid by the defendant, the defendant's executor or administrator, or by any person entitled to the estate under the defendant, to the plaintiff, or the plaintiff's executor or administrator with the same effect as if both parties were living. The writ of possession shall be issued in the name of the original plaintiff against the original defendant, although either or both are dead; and when executed, it shall enure to the use and benefit of the plaintiff, or of the person who is then entitled to the premises under the plaintiff, as if executed in the lifetime of the parties.

(g) Foreclosure of Mortgage. An action under this rule may be used for the purpose of the foreclosure of a mortgage of real estate as provided by law.

## RULE 80B. REVIEW OF GOVERNMENTAL ACTION

(a) Mode of Review. When review by the Superior Court, whether by appeal or otherwise, of any action or failure or refusal to act by a governmental

agency, including any department, board, commission, or officer, is provided by statute or is otherwise available by law, proceedings for such review shall, except to the extent inconsistent with the provisions of a statute and except for a review of final agency action or the failure or refusal of an agency to act brought pursuant to 5 M.R.S.A. § 11001 *et seq.* of the Maine Administrative Procedure Act as provided by Rule 80C, be governed by these Rules of Civil Procedure as modified by this rule. The complaint and summons shall be served upon the agency and all parties in accordance with the provisions of Rule 4, but such service upon the agency shall not by itself make the agency a proper party to the proceedings. The complaint shall include a concise statement of the grounds upon which the plaintiff contends the plaintiff is entitled to relief, and shall demand the relief sought. No responsive pleading need be filed unless required by statute or by order of the court, but in any event any party named as a defendant shall file a written appearance within the time for serving an answer under Rule 12(a). Leave to amend pleadings shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action.

(b) Time Limits; Stay. The time within which review may be sought shall be as provided by statute, except that if no time limit is specified by statute, the complaint shall be filed within 30 days after notice of any action or refusal to act of which review is sought unless the court enlarges the time in accordance with Rule 6(b), and, in the event of a failure to act, within six months after expiration of the time in which action should reasonably have occurred. Except as otherwise provided by statute, the filing of the complaint does not stay any action of which review is sought, but the court may order a stay upon such terms as it deems proper.

(c) Trial or Hearing; Judgment. Any trial of the facts where provided by statute or otherwise shall be without jury unless the Constitution of the State of Maine or a statute gives the right to trial by jury. The judgment of the court may affirm, reverse, or modify the decision under review or may remand the case to the governmental agency for further proceedings.

(d) Motion for Trial; Waiver. If the court finds on motion that a party to a review of governmental action is entitled to a trial of the facts, the court shall order a trial to permit the introduction of evidence that does not appear in the record of governmental action and that is not stipulated. Such motion shall be filed within 30 days after the complaint is filed. The failure of a party to file said motion shall constitute a waiver of any right to a trial of the facts. Upon filing of a motion for trial of the facts, the time limits contained in this rule shall cease to run pending the

issuance of an appropriate order of court specifying the future course of proceedings with that motion. With the motion the moving party shall also file a detailed statement, in the nature of an offer of proof, of the evidence that the party intends to introduce at trial. That statement shall be sufficient to permit the court to make a proper determination as to whether any trial of the facts as presented in the motion and offer of proof is appropriate under this rule and if so to what extent. After hearing, the court shall issue an appropriate order specifying the future course of proceedings.

(e) Record. Except where otherwise provided by statute or this Rule, it shall be the plaintiff's responsibility to insure the preparation and submission to the Superior Court of the record of the proceedings of the governmental agency being reviewed. Except where otherwise provided by this Rule, the record for review shall be submitted at the same time as or prior to the plaintiff's brief. Where a motion is made for a trial of the facts pursuant to subdivision (d) of this Rule, the moving party shall be responsible to insure the preparation and submission of the record to the court and such record shall be submitted with the motion.

The parties shall meet in advance of the time for filing the plaintiff's brief to agree on the record to be submitted. Where agreement cannot be reached, any dispute as to the record shall be submitted to the court. The record shall include the application or other documents that initiated the agency proceedings and the decision and findings of fact that are appealed from, and the record may include any other documents or evidence before the governmental agency and a transcript or other record of any hearings.

In lieu of an actual record, the parties may submit stipulations as to the record; however, the full decision and findings of fact appealed from shall be included.

(f) Review Limited to Record. Except where otherwise provided by statute or by order of court pursuant to subdivision (d) hereof, review shall be based upon the record of the proceedings before the governmental agency.

(g) Time for Briefs and Record. Unless otherwise ordered by the court, all parties to a review of governmental action shall file briefs. The plaintiff shall file the plaintiff's brief within 40 days after the date on which the complaint is filed. Any other party shall file that party's brief within 30 days after service of the plaintiff's brief, and the plaintiff may file a reply brief 14 days after last service of the brief of any other party. However, no brief shall be filed less than 6 calendar

days before the date set for oral argument. On a showing of good cause the court may increase or decrease the time limits prescribed in this subdivision.

(h) Consequence of Failure to File. If the plaintiff fails to comply with subdivision (e) or (g) of this rule, the court may dismiss the action for want of prosecution. If any other party fails so to comply, that party will not be heard at oral argument except by permission of the court.

(i) Joinder With Independent Action. If a claim for review of governmental action is joined with a claim alleging an independent basis for relief from governmental action, the complaint shall contain a separate count for each claim for relief asserted, setting forth in each count a concise statement of the grounds upon which the plaintiff contends the plaintiff is entitled to relief and a demand for the relief sought. A party in a proceeding governed by this rule asserting such an independent basis for relief shall file a motion no later than 10 days after the filing of the complaint, requesting the court to specify the future course of proceedings, including the timing of briefs and argument and the scope and timing of discovery and other pretrial proceedings including pretrial conferences. Upon the filing of such a motion, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court. After hearing, the court shall issue such order.

(j) Discovery. In a proceeding governed by this rule, discovery shall be allowed as in other civil actions when such discovery is relevant either to the subject matter involved in a trial of the facts to which the discovering party may be entitled or to that involved in an independent claim joined with a claim for review of governmental action as provided in subdivision (i) of this rule. No other discovery shall be allowed in proceedings governed by this rule except upon order of court for good cause shown.

(k) Pretrial Procedure. In the absence of a court order, the pretrial procedure of Rule 16 shall not be applicable to a proceeding governed by this rule.

(l) Scheduling of Oral Argument. Unless the court otherwise directs, all appeals shall be in order for oral argument 20 days after the date on which the responding party's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each

counsel of record or unrepresented party of the time and place at which oral argument will be heard.

(m) Review by the Law Court. Unless by statute or otherwise the decision of the Superior Court is final, review by the Law Court shall be by appeal or report in accordance with the Maine Rules of Appellate Procedure, and no other method of appellate review shall be permitted. If the Superior Court remands the case for further proceedings, all issues raised on the Superior Court's review of the governmental action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such governmental action.

## RULE 80C. REVIEW OF FINAL AGENCY ACTION

(a) Mode of Review. A review of final agency action or the failure or refusal of an agency to act brought in the Superior Court pursuant to 5 M.R.S.A. § 11001 et seq., Maine Administrative Procedure Act, or in the District Court to review disciplinary decisions of occupational licensing boards and commissions under 4 M.R.S.A. § 152 (10) and 10 M.R.S.A. § 8003, shall be governed by these Rules of Civil Procedure as modified by this rule, except to the extent inconsistent with the provisions of a statute. Proceedings for judicial review of final agency action or the failure or refusal of an agency to act shall be commenced by filing a petition as provided by 5 M.R.S.A. § 11002(1) and the contents of the petition shall be as provided by 5 M.R.S.A. § 11002(2). A petition for review shall be served as provided by 5 M.R.S.A. § 11003. No responsive pleading need be filed except as provided by 5 M.R.S.A. § 11005. Leave to amend pleadings shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action.

(b) Time Limits; Stay. The time within which a review of final agency action or the failure or refusal of an agency to act may be sought shall be as provided by 5 M.R.S.A. § 11002(3). An application for a stay of final agency action shall be as provided by 5 M.R.S.A. § 11004.

(c) Manner and Scope of Review. The manner and scope of review of final agency action or the failure or refusal of an agency to act shall be as provided by 5 M.R.S.A. § 11007(2) through § 11007(4).

(d) Power of Court to Correct or Modify Record. Judicial review shall be confined to the record upon which the agency decision was based, except as

provided by 5 M.R.S.A. § 11006(1). The reviewing court may require or permit subsequent corrections to the record as provided by 5 M.R.S.A. § 11006(2).

(e) Additional Evidence. A party who intends to request that the reviewing court take additional evidence or order the taking of additional evidence before an agency as provided by 5 M.R.S.A. § 11006(1) shall file a motion to that effect within 10 days after the record of the proceedings is filed under subdivision (f), but not before the record of proceedings is filed. The failure of a party to file such a motion shall constitute a waiver of any right to the taking of additional evidence. Upon the filing of a motion for the taking of additional evidence, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court specifying the future course of proceedings with that motion. The moving party shall also file with the motion a detailed statement, in the nature of an offer of proof, of the evidence intended to be taken, except as provided below. That statement shall be sufficient to permit the court to make a proper determination as to whether the taking of additional evidence as presented in the motion and offer of proof is appropriate under this rule and if so to what extent. After hearing, the court shall issue an appropriate order specifying the future course of proceedings.

(f) Record. The agency shall file the complete record of the proceedings under review as provided by 5 M.R.S.A. § 11005. If the petitioner believes that the record filed by the agency either is incomplete or over-inclusive, the petitioner shall serve notice upon the agency within 10 days after the record is filed. This notice shall include specific proposals by the petitioner regarding additions to or deletions from the record filed by the agency. The parties shall attempt to agree on the contents of the record. If the parties cannot agree, the petitioner may request that the court modify the contents of the record.

(g) Filing of Briefs. Unless otherwise ordered by the court, all parties to a review of governmental action shall file briefs. The petitioner shall file the petitioner's brief within 40 days after the date when the administrative agency files the record of the proceedings with the court. Any other party shall file that party's brief within 30 days after the service of the petitioner's brief, and the petitioner may file a reply brief 14 days after last service of the brief of any other party. However, no brief shall be filed less than 6 calendar days before the date set for oral argument. On a showing of good cause the court may increase or decrease the time limits prescribed in this subdivision.

(h) Consequence of Failure to File. If the petitioner fails to comply with subdivision (g) of this rule, the court may dismiss the action for want of prosecution. If any other party fails to comply, that party will not be heard at oral argument except by permission of the court.

(i) Joinder With Independent Action. If a claim for review of governmental action under this rule is joined with a claim alleging an independent basis for relief from governmental action, the petition shall contain a separate count for each claim for relief asserted, setting forth the facts relied upon, the legal basis of the claim, and the relief requested. A party in a proceeding governed by this rule asserting such an independent basis for relief shall file a motion no later than 10 days after the petition is filed, requesting the court to specify the future course of proceedings. Upon the filing of such a motion, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court. After hearing, the court shall issue an order; provided that such a motion need not be filed in cases where the parties to the proceedings have filed with the court a stipulation as to the future course of proceedings.

(j) Discovery. In a proceeding governed by this rule, discovery shall be allowed as in other civil actions when such discovery is relevant either to the subject matter involved in an evidentiary hearing to which the discovering party may be entitled or to that involved in an independent claim joined with a claim for review of governmental action as provided in subdivision (i) of this rule. No other discovery shall be allowed in proceedings governed by this rule except upon order of court for good cause shown.

(k) Pretrial Procedure. In the absence of a court order, the pretrial procedure of Rule 16 shall not be applicable to a proceeding governed by this Rule.

(l) Scheduling of Oral Argument. Unless the court otherwise directs, all appeals shall be in order for oral argument 20 days after the date on which the responding party's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

(m) Appeal to the Law Court. If the court remands the case for further proceedings, all issues raised on the court’s review of the agency action shall be preserved in a subsequent appeal taken from a final judgment entered on review of

such agency action. Appeal to the Law Court of a review proceeding in the court shall be as provided by 5 M.R.S.A. § 11008.

## RULE 80D. FORCIBLE ENTRY AND DETAINER

(a) Applicability to Forcible Entry and Detainer. These rules, so far as applicable, shall govern the procedure in forcible entry and detainer actions in the District Court and on appeal to the Superior Court and the Law Court, except as otherwise provided in this rule or by statute.

(b) Summons. The summons in forcible entry and detainer actions shall bear the signature or facsimile signature of the judge or the clerk, contain the name and address of the court and the names of the parties, be directed to the defendant, state the day when the action is returnable, which shall be not less than 7 days from the date of service of the summons; and shall notify the defendant that in case of defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant for possession of the premises. The summons shall also notify the defendant that if the return day is on a holiday, the defendant shall appear and state any defense on the day following the holiday.

(c) Complaint. The complaint for forcible entry and detainer shall be filed no later than one day before the date of the hearing.

(d) Defendant's Pleading. If the defendant claims title in defendant's name or in another person under whom the defendant claims the premises, shall assert such claim by answer filed on or before the return day, and further proceedings in the actions shall be as provided by law. Otherwise the defendant may appear and defend without filing a responsive pleading.

(e) Time of Hearing.

(1) *Hearing Date.* All forcible entry and detainer actions shall be in order for trial on the return day.

(2) *Mediation.* At the time set for hearing, the court may refer the parties to mediation pursuant to the process established by Rule 92(f) of these rules. Every settlement resulting from mediation shall be presented to the court in writing for approval as a court order, and the court shall approve reasonable settlements. An approved settlement shall have the force and effect of a judgment and may not be appealed. If no mediator is available, or if mediation efforts fail or

mediation proves inappropriate, the court shall hear the matter without undue delay.

(f) Appeal.

(1) *Appeal on Questions of Law.* Either party may appeal to the Superior Court and the Law Court on questions of law as in other civil actions.

(2) *Appeal by Jury Trial De Novo.*

(A) Notice of Appeal and Demand for Jury Trial. Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. A party who seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury. Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(B) Preparation and Transmission of the Record. The record on appeal shall be prepared in accordance with Rule 76F. The clerk of the division shall transmit the record to the Superior Court within five days of the filing of the notice of appeal, without waiting for a transcript. The clerk of the Superior Court shall docket the appeal on receipt of the record thus transmitted. If a transcript is subsequently received by the clerk of the District Court, it shall be transmitted to the Superior Court immediately and shall be incorporated in the record on appeal by the clerk of the Superior Court.

(3) *Same: Determination on Affidavits.* The appellee may, within ten days after the mailing of the clerk's notice of the docketing of the appeal in the Superior Court, file a counter affidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which notice was timely filed. The court may upon its own motion, or the motion of either party, order that the transcript or relevant portions thereof be incorporated in the record on appeal prior to the court's review of the affidavits and record under this paragraph. The court shall review the affidavits of both parties and the record on appeal, including any transcript or portions thereof ordered to be

incorporated as provided in this paragraph, and shall determine whether the appellant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(4) *Same: Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that the appellant has shown in light of the affidavits and the whole record, including any transcript or portions thereof ordered to be incorporated as provided in paragraph (3) of this subdivision, that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40(a).

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(5) *Same: No Genuine Issue of Fact: Disposition.* If the court finds that the appellant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in paragraph (1) of this subdivision.

(6) *Same: Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the appellant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue

exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (5) of this subdivision.

(7) *Same: Rules Inapplicable.* Rules 16, 26-37, 39, 42 and 56 do not apply to jury trials de novo in the Superior Court under this rule.

(g) No Joinder of Other Actions. Forcible entry and detainer actions shall not be joined with any other action, nor shall a defendant in such action file any counterclaim.

(h) Venue. An action for forcible entry and detainer shall be brought in the division in which the property is located.

(i) Removal. There shall be no removal of forcible entry and detainer actions, except as provided by statute.

(j) Issue of Writ of Possession; Stay. A writ of possession shall issue within the time provided by statute after entry of judgment therefore, provided that

(1) If defendant within the time provided by statute makes a timely motion pursuant to any of the rules enumerated in Rule 76D as terminating the running of the time for appeal, the issuance of the writ shall be stayed until five days after entry of an order disposing of the motion;

(2) On motion of defendant filed in the Superior Court within the time provided by statute, or any extension thereof under paragraph (1) of this subdivision, the Superior Court may grant a stay for the full time for appeal, or any extension thereof, allowed under Rule 76D, if the Superior Court finds that defendant's grounds of appeal present a genuine issue of material fact or law;

(3) If defendant files a timely notice of appeal under Rule 76D, issuance of the writ shall be stayed until a stay pending appeal is granted or denied in the Superior Court as provided in paragraph (4) of this subdivision;

(4) When the appeal is docketed in the Superior Court, that court may stay the issuance of the writ pending disposition of the appeal on conditions as provided in 14 M.R.S.A. § 6008.

A copy of the writ of possession shall after issue be retained by the clerk for examination by any interested person.

(k) Stays Upon Appeal to the Law Court. If an aggrieved party appeals from a judgment of the Superior Court in accordance with Rule 76D, an order of the Superior Court staying the writ of possession, together with any conditions imposed pursuant to 14 M.R.S.A. § 6008, shall remain in effect until final disposition of the appeal in the Law Court. Either party may move in the Superior Court during the pendency of the appeal for modification or amendment of the order as provided in 14 M.R.S.A. § 6008. Nothing in this rule limits the power of the Law Court during the pendency of the appeal to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

## RULE 80E. ADMINISTRATIVE INSPECTION WARRANTS

(a) Who May Secure. An official or employee of the state or of any political subdivision of the state who is authorized by law to conduct inspections of premises may apply to a District Court Judge, in the division and district in which the property to be inspected is located, for a warrant to inspect particularly described premises for particularly described purposes authorized by law.

(b) Contents of Application. The application shall be in the form of a sworn affidavit and shall set forth the following facts:

(1) The statutory or other authority pursuant to which the applicant claims to be authorized to conduct inspections, the premises to be inspected, and the purpose of the inspection.

(2) Whether such inspection is sought as part of a general area inspection and if so, the area being inspected and the grounds of probable cause to believe that there is located on the property in said area violations of statutes, ordinances, or regulations the applicant is authorized to enforce.

(3) If the inspection is not part of a general area inspection, the grounds of probable cause to believe that there is located on the particular premises to be inspected violations of statutes, ordinances, or regulations the applicant is authorized to enforce.

(4) That the applicant has requested permission from the owner or occupant of the premises to be inspected to conduct such inspection and that such permission has been denied.

(5) That the applicant has at least 24 hours in advance of the presentation of the application given written notice to the owner or occupant of the premises to be inspected of the time and place at which the applicant intends to present the application to the court.

(6) The requirements of subdivisions (4) and (5) of this rule may be dispensed with if the application sets forth facts showing probable cause to believe that there are located on the premises to be inspected violations of law which constitute an immediate threat to the health or safety of the public.

(c) Issuance. Upon a finding of probable cause the District Court Judge shall issue a warrant to the applicant, but if the owner or occupant of the premises is present at the time of presentation of the application no warrant shall issue until said owner or occupant has been afforded an opportunity to state any opposition to the issuance of the warrant.

(d) Contents. The warrant shall specify the grounds of probable cause, the premises to be inspected, the purpose of the inspection, and the person authorized to conduct the inspection.

(e) Execution. The person to whom a warrant is issued shall execute the same by conducting the inspection authorized during normal business hours within 10 days after issuance of the warrant. The person executing the warrant shall at the time of execution deliver a copy thereof to the owner or the occupant of the premises inspected or leave a copy on said premises in a conspicuous place.

(f) Return. Not later than 10 days after execution of the warrant the person executing it shall file a return with the court from which the warrant issued setting forth the date and time of the inspection and any violations of law found upon the inspected premises.

## RULE 80F. TRAFFIC INFRACTIONS

(a) Applicability. These rules shall apply to traffic infraction proceedings in the District Court except as otherwise provided in this rule.

(b) Commencement of Proceeding. A proceeding under this rule is commenced by delivery of a copy of a Violation Summons and Complaint completed in the manner prescribed by subdivision (c). Such Violation Summons and Complaint may be:

(1) filled out and delivered to defendant personally by any officer authorized to enforce the motor vehicle laws of this state who has probable cause to believe that a traffic infraction has been committed;

(2) filled out by any officer authorized to enforce the motor vehicle laws of this state who has probable cause to believe that a traffic infraction has been committed and (A) transmitted to any officer authorized to enforce a statute of this state defining a traffic infraction for delivery to the defendant personally, or (B) served on the defendant in any manner permitted under Rule 4(c)(4) of the Maine Rules of Criminal Procedure; or

(3) filled out by a prosecutor and delivered to the defendant personally or the defendant's attorney personally if the traffic infraction arises out of the same set of facts which gave rise to another traffic infraction or criminal complaint under the motor vehicle laws of this state. Any Violation Summons and Complaint served as provided in this paragraph (3) may be filed in the Violations Bureau by delivering it to the clerk of the division in which the infraction is alleged to have been committed or in a county in which the criminal complaint is or was pending. The clerk may receive the defendant's answer and shall send the Violation Summons and Complaint and any answer to the Violations Bureau.

The officer delivering the Violation Summons and Complaint shall not take the defendant into custody. Within 5 days after delivery to defendant, the officer shall cause the original of the Violation Summons and Complaint to be filed with the Violations Bureau. No filing fee is required. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision that enacted such ordinance.

(c) Content of Violation Summons and Complaint. The Violation Summons and Complaint shall contain the name of the defendant; the time and place of the alleged infraction; a brief description of the infraction; the number of days within which the defendant is to file an answer in writing with the Violations Bureau; and the signature of the officer issuing the ticket and complaint. No other

summons, complaint or pleading shall be required of the state, but motions for appropriate amendment of the complaint shall be freely granted.

(d) Pleadings of Defendant.

(1) *Answer.* An answer shall be filed with the Violations Bureau within 20 days of the date of service of the Violation Summons and Complaint. The answer shall state that the violation is either contested or not contested and the answer shall be made in writing by the defendant or by defendant's attorney.

(2) *No Joinder.* Proceedings pursuant to this rule shall not be joined with any actions other than another proceeding pursuant to this rule, nor shall a defendant file a counterclaim.

(3) *Not Contested.* An answer that a violation is not contested shall not be admissible as an admission in any civil or criminal proceeding arising out of the same set of facts.

(4) *Judgment on Acceptance of Answer of "Not Contested."* The Violations Bureau clerk may accept an answer of "not contested" to any traffic infraction and assess the fine as set in accordance with a schedule of fines established by the Chief Judge for various categories of traffic infractions.

(e) Incomplete Filing. Notwithstanding Maine Rule of Civil Procedure 5(f), the Clerk of the Violations Bureau or the Clerk's designee, may docket an incomplete filing in a traffic infraction matter for the sole purpose of being able to respond to customer service inquiries.

(f) Filed Cases. When the attorney for the State files a traffic infraction complaint, with or without conditions, such filing shall be for a period of 180 days. Filed cases shall be dismissed by the Clerk of the Violations Bureau or the Clerk's designee at the conclusion of the 180-day period unless the attorney for the State notifies the Bureau within that time period that the case should be set for trial.

When the attorney for the State files a traffic infraction complaint, with the condition of payment of costs, the costs must be paid to the Violations Bureau within 30 days of the date of the filing. If the costs are not paid within 30 days, the Violations Bureau shall set the case for trial.

(g) Venue; Trial. A traffic infraction proceeding shall be filed in the Violations Bureau and, upon the filing of an answer of "contested," the Violations Bureau shall transfer the case to the appropriate division of the District Court for trial. Unless otherwise ordered by the court, the trial of a traffic infraction shall be held in the division in which the infraction is alleged to have been committed. If the defendant is adjudicated to have committed the traffic infraction and a fine is imposed by the court, the court shall inform the defendant that immediate payment of the fine in full is required. Immediately upon disposition, the case shall be returned to the Violations Bureau.

(h) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(i) Removal. There shall be no removal of traffic infraction proceedings.

(j) Standard of Proof. Adjudication of a traffic infraction shall be by a preponderance of the evidence.

(k) Default.

(1) *Entry of Default.* If the defendant fails to respond within 20 days of the date of service of the Violation Summons and Complaint, or if the defendant fails to appear at trial, the Clerk of the Violations Bureau or the Clerk's designee shall enter a default judgment and adjudicate that the defendant has committed the traffic infraction alleged. In each case, after entry of default, the Clerk or the Clerk's designee shall impose the fine from the schedule of fines established by the Chief Judge.

(2) *Setting Aside the Default.* For good cause shown the court may set aside the default and adjudication under M.R. Civ. P. 55 (c) and 60 (b), as applicable. If it is determined that due to the operation of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a default should not have been entered, all costs shall be stricken, the adjudication vacated, the default stricken, and the defendant permitted an opportunity to answer.

(l) Extension of Time to Pay Fines.

(1) *Failure to Answer or Answer of "No Contest."* If a defendant in a traffic infraction proceeding fails to answer within 20 days of the date of service of the Violation Summons and Complaint or answers "no contest" but does not pay

the fine or pays only part of the fine, the Violations Bureau shall send a notice to the defendant, at his/her last known address, that if the fine is not paid in full within 30 days, the defendant's right to operate a motor vehicle in Maine will be suspended without further notice. If the fine is not paid in full within the 30-day period, the suspension is effective and the Secretary of State shall be notified of the suspension.

(2) *Contested Infractions*. If the traffic infraction case is referred to court because the defendant contested the case and if the defendant changes the answer to "no contest" or if a fine is imposed by the court, the fine must be paid within 30 days of imposition unless the court orders a different payment date. If the fine is not paid in full within 30 days or within the period of time ordered by the court, whichever is longer, the defendant's right to operate a motor vehicle in Maine is suspended immediately without further notice and the Secretary of State shall be notified of the suspension.

Other than the above, there shall be no extensions of time for payment of a traffic infraction fine.

(m) Appeal. A party entitled to appeal may do so as in other civil actions.

(n) Costs. Costs shall not be awarded as in other civil actions. Only those costs expressly authorized by statute shall be imposed.

(o) Notice of Order or Judgment. The clerk is not required to serve a notice of the entry of an order or judgment on the State or a political subdivision. The clerk is not required to serve a notice of the entry of an order or judgment on the defendant when the defendant, in writing, enters an answer of "not contested" to the traffic infraction or when the defendant, personally or through counsel, appears in court and is informed by the court of the judgment or order.

## RULE 80G. ACTIONS FOR LICENSE REVOCATION OR SUSPENSION

(a) Actions for License Revocation or Suspension. Actions in the District Court under 4 M.R.S.A. § 152(9) seeking revocation or suspension of a license issued by a state licensing agency pursuant to 4 M.R.S.A. § 184 shall be governed by this rule.

(b) Complaint and Service of Process. The action shall be commenced by complaint filed in the District Court. The complaint must allege the violation of a

cited statute or rule and the relief requested. The complaint and summons shall be served as required by 4 M.R.S.A. § 184.

(c) Emergency Revocation or Suspension of License. Upon the filing of a verified complaint or complaint accompanied by affidavits demonstrating an immediate threat to the public health, safety or welfare, the court ex parte may order the temporary revocation or suspension of a license pursuant to 4 M.R.S.A. § 184 (6). The court shall promptly order expedited notice and hearing on the complaint. A temporary order of revocation or suspension shall expire within 30 days of issuance unless renewed after notice and hearing.

(d) Trial. Trial of the action shall be as provided in these rules.

(e) Judgment. The parties may not dispose of the action by agreement or consent decree without the approval of the court. The court shall make findings of fact and conclusions of law as required by 4 M.R.S.A. § 184(7). Upon entry of judgment, the clerk shall serve each party with a copy of the judgment, including any separate opinion, findings of fact and conclusions of law supporting the judgment, and with a statement describing appellate rights to seek review of the judgment.

## RULE 80H. CIVIL VIOLATIONS

(a) Applicability. These rules shall apply to civil violation proceedings in the District Court, other than traffic infraction proceedings; provided, however, that this rule, so far as applicable, shall supersede the general provisions of the rules in all such proceedings where the amount of the fine, penalty, forfeiture or other sanction that may be assessed for each separate violation is $1,000 or less. "Civil violation" has the meaning set forth in 17-A M.R.S.A. § 4-B.

(b) Commencement of Proceedings. A proceeding under this rule shall be commenced by one of the following methods:

(1) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule and served upon the defendant within the state by any officer authorized to enforce a statute or ordinance to which this rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. Service under this paragraph shall be made upon an individual by delivering a copy of the citation to the individual personally and, if the defendant is an incompetent person, personally to the appropriate individual

specified in Rule 4(d)(3) of these rules. Service under this paragraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rules 4(d)(4) through (10) of these rules.

(2) A citation may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any officer authorized to enforce a statute or ordinance to which this rule applies, if the officer has probable cause to believe that a civil violation under such statute or ordinance has been committed. The officer may cause the citation to be served, by any method provided in Rule 4(d), (e), (f), (g) or (j) of these rules.

The officer serving the citation shall not take the defendant into custody, except as temporary detention is authorized by 17-A M.R.S.A. § 17. As soon as practicable after service upon the defendant, the officer shall cause the original of the citation to be filed with the court. No filing fee is required. All proceedings arising under a statute shall be brought in the name of the State of Maine. All proceedings arising under an ordinance shall be brought in the name and to the use of the political subdivision which enacted such ordinance.

(c) Content of Citation and Complaint.

(1) A citation to be served as provided in subdivision (b) of this rule shall contain the name of the defendant; the time and place of the alleged violation; a brief description of the violation; the time, place and date the defendant is to appear in court, which shall in no case be less than seven days from the date of service unless the defendant agrees to a shorter period of time; and the signature of the officer issuing the citation.

(2) The citation shall serve as a complaint, and no other summons, complaint or pleading shall be required, but motions for appropriate amendment of the complaint shall be freely granted. Any form which contains the elements specified in paragraph (1) of this subdivision shall be sufficient under the rules.

(d) Pleadings of Defendant.

(1) *Oral.* Unless the matter has been previously disposed of as provided in paragraph (3) of this subdivision, the defendant shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally. At a defendant's initial appearance before the court, the defendant shall be informed by the court that if the defendant is adjudicated to

have committed the civil violation and if a fine is imposed by the court, immediate payment of the fine in full is required.

(2) *No Joinder.* Proceedings pursuant to this rule shall not be joined with any actions other than another proceeding pursuant to this rule, nor shall a defendant file any counterclaim.

(3) *Judgment on Acceptance of Admission.* The District Court Clerk may accept, at the signed request of the defendant, an admission upon payment of a fine as set by the judge in that particular case or as set by the resident judge in accordance with a schedule of fines established by the judge with the approval of the Chief Judge for various categories of civil violations.

(e) Venue. A civil violation proceeding shall be brought in the division in which the violation is alleged to have been committed.

(f) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(g) Standard of Proof. Adjudication of a civil violation shall be by a preponderance of the evidence.

(h) Default.

(1) Entry of Default. If the defendant fails to appear as required by this Rule, the judge shall enter the defendant's default, adjudicate that the defendant has committed the civil violation alleged, and impose a fine as set by the judge for that particular case or as set in accordance with a schedule of fines for civil violations established by the Chief Judge of the District Court.

(2) Setting Aside the Default. For good cause shown, the court may set aside the default and adjudication under M.R. Civ. P. 55(c) and 60(b), as applicable. If it is determined that, due to the operation of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, a default should not have been entered, the court shall vacate the adjudication, strike the default and all costs assessed, vacate any license suspension, and permit the defendant an opportunity to answer.

(i) Appeal. A party entitled to appeal may do so as in other civil actions.

(j) Costs. Costs shall not be awarded as in other civil actions. Only those costs expressly authorized by statute shall be imposed.

(k) Notice of Orders or Judgments. The clerk is not required to serve a notice of the entry of an order or judgment on the State or municipality. The clerk is not required to serve a notice of the entry of an order or judgment on the defendant when the defendant, in writing, admits the violation or when the defendant, personally or through counsel, appears in court and is informed by the court of the judgment or order.

## RULE 80I. SEARCH WARRANTS FOR SCHEDULE Z DRUGS

(a) Issuance of Warrant. A warrant may be issued under this rule by any justice or judge to search for and seize any schedule Z drug that is declared to be contraband and subject to seizure by 17-A M.R.S.A. § 1114. Rule 41(a), (c), (d), (e), (f) and (g) of the Maine Rules of Criminal Procedure shall govern the issuance and execution of any warrant authorized by this rule.

(b) Suppression of Evidence. In a proceeding under a statute which makes the possession of a schedule Z drug a civil violation a District Court Judge may, with the consent of both parties, entertain a motion to suppress evidence prior to trial. If a question concerning the admissibility of evidence has not been determined by motion to suppress prior to trial, upon appropriate objection, it shall be determined by the District Court Judge at the time of trial.

## RULE 80J. WARRANTS FOR SURVEYS AND TESTS

(a) Who May Apply. An official or employee of any State agency or any political subdivision of the State which agency or subdivision is authorized by law to acquire land through the exercise of eminent domain for the purpose of providing solid waste disposal facilities may apply to a District Court Judge in the division and district in which the land to be surveyed or tested is located for a warrant under 4 M.R.S.A. § 180 to survey and conduct tests upon particularly described premises which are under consideration for condemnation.

(b) Contents of Application. The application shall be in the form of a sworn affidavit and shall set forth:

(1) the statutory authority pursuant to which the agency or subdivision is authorized to acquire lands by eminent domain, and a description of the premises to be surveyed or tested;

(2) the facts sufficient to demonstrate a compelling need for such warrant, which need may be demonstrated by an allegation that acquisition of the land in issue is or may be necessary in order for the agency or municipality to comply with state law or regulations or for protection of the public safety, health or welfare;

(3) a statement that the applicant has requested permission from the owner of the premises to conduct such survey or test and such permission has been denied;

(4) a statement that the applicant has at least 3 days in advance of the presentation of the application given written notice to the owner and occupant of the land of the time and place at which the applicant intends to present the application to the court and the right of the owner and occupant to be present and to be heard thereat.

(c) Issuance. Upon a finding of compelling need the District Court Judge shall issue the warrant to the applicant.

(d) Contents. The warrant shall specify the grounds of compelling need, the land to be surveyed or tested, the methods to be employed and the persons authorized to conduct the same.

(e) Execution. The warrant shall be executed in compliance with the provisions of Title 4 M.R.S.A. § 180.

(f) Return. Not later than 60 days after execution of the warrant the person executing it shall file a return with the Court from which the warrant issued setting forth the date and time of the inspection and the results of the inspection.

## RULE 80K. LAND USE VIOLATIONS

(a) Applicability. Except as otherwise provided in this rule, these rules shall apply to proceedings in the District Court involving alleged violations of land use laws and ordinances, whether administered and enforced primarily at the state or

the local level, including but not limited to, those statutes, ordinances, codes, rules and regulations set forth in 4 M.R.S.A. § 152(6).

(b) Commencement of Proceedings; Service.

(1) *In General.* A proceeding under this rule shall be commenced by one of the following methods:

(A) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule and served upon the alleged violator within the state by any certified municipal official, any certified employee of the Department of Environmental Protection, or any other official authorized to serve civil process to enforce a statute, ordinance, code, rule or regulation to which this rule applies, if such official has reasonable grounds to believe that a violation of any provision of law as to which the official is authorized to serve process and to which this rule applies has been or is being committed. Service under this subparagraph shall be made upon an individual by delivering a copy of the Land Use Citation and Complaint to the individual personally and, if the alleged violator is an infant or incompetent person, personally to the appropriate individual specified in Rule 4(d)(2) or (3) of these rules. Service under this subparagraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rule 4(d)(4)-(14) of these rules.

(B) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any public official who has reasonable grounds to believe that a violation of any provision of law that the official is authorized to enforce and to which this rule applies has been or is being committed. The complainant shall transmit the Land Use Citation and Complaint to any officer or person authorized to serve civil process under Rule 4(c) of these rules, who may serve it, or cause it to be served, upon the alleged violator by any method provided in Rule 4(d), (e), (f), (g), or (j) of these rules.

(C) In any proceeding under this rule in which a temporary restraining order is sought, the original of a Land Use Citation and Complaint, filled out as prescribed in paragraph (2) of subdivision (c) of this rule may be filed with the court by any person authorized under subdivision (h) of this rule to represent the plaintiff, or by the plaintiff's attorney, if such person has

reasonable grounds to believe that a violation of any provision of law as to which the person has such authority is being committed and that immediate and irreparable injury, loss, or damage will result from such violation before the alleged violator can be heard personally or by counsel in opposition to the order. The person filing the Land Use Citation and Complaint shall, at the earliest opportunity, serve, or cause to be served, a copy of it on the alleged violator by any method provided in subparagraph (A) or (B) of this paragraph, together with notice of the hearing on the preliminary injunction.

(2) *Additional Service on Property Owner.* When the alleged violator is not the owner of the property on which the violation is alleged to have occurred or is occurring, the person making service on the alleged violator shall serve, or cause to be served, a copy of the Land Use Citation and Complaint upon the owner of the property by any appropriate method provided in Rule 4 of these rules.

(3) *Return of Service.* As soon as practicable after service upon the alleged land use violator, and the property owner if appropriate, the person making service shall cause the original of the Land Use Citation and Complaint to be filed with the court, together with the appropriate proof of service as provided in Rule 4(h) or (j) of these rules.

(4) *Proceedings in Name of Municipality or State.* All proceedings arising under the provisions of locally administered and enforced laws and ordinances or regulations shall be brought in the name and to the use of the municipality. All proceedings arising under laws administered or enforced by the State shall be brought in the name of the State.

(c) Content of Land Use Citation and Complaint.

(1) A Land Use Citation and Complaint that is to be served as provided in subparagraph (1)(A) or (B) of subdivision (b) of this rule shall contain the name and address of the alleged violator; the name and address of the property owner if different; the time and place of the alleged violation or, if they are not known, the time and place at which it was first observed by the complainant; a brief description of the alleged violation; a summary of the law or ordinance provision which is alleged to have been violated, including the penalties for violation; if a preliminary injunction is sought, a statement to that effect; the time, date, and place the alleged violator is to appear in court; where applicable, a statement that the alleged violator was advised of the violation; the signature and title of the complainant; and the signature of the alleged violator acknowledging

receipt of the citation and complaint or a statement that the alleged violator refused to sign, or was unable to sign. If the violation alleged is of a state agency rule or a municipal ordinance or regulation, an attested or certified copy of the section or sections alleged to have been violated, together with a statement describing the place where the complete text may be obtained, shall be attached to the original of the Land Use Citation and Complaint. The Land Use Citation and Complaint shall notify the alleged violator that in the event of failure to appear on the date specified, a judgment by default may be entered.

(2) A Land Use Citation and Complaint that is to be filed with the court as provided in subparagraph (1)(C) of subdivision (b) of this rule shall contain the matters provided in paragraph (1) of this subdivision and a statement that a temporary restraining order is sought. It shall be accompanied by the affidavit and the certificate required by Rule 65(a) of these rules.

No other summons, complaint, or pleading shall be required of the municipality or the State, but motions for appropriate amendment of the Land Use Citation and Complaint shall be freely granted.

(d) Temporary Restraining Order and Preliminary Injunction: Security. The applicant for a temporary restraining order or a preliminary injunction under this rule shall not be required to give security as a condition upon the issuance thereof.

(e) Pleadings of Defendant.

(1) *Oral.* The alleged violator shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally.

(2) *No Joinder.* Proceedings pursuant to this rule shall not be joined with any action other than another proceeding pursuant to this rule, nor shall an alleged violator file a counterclaim or cross-claim.

(f) Venue. A land use violation proceeding under this rule shall be brought in the division in which the violation is alleged to have been committed.

(g) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(h) Authority of Complainant. A person who is not an attorney may represent a municipality under 12 M.R.S.A. § 4812-C(2), 30-A M.R.S.A.

§ 4221(2), or 30-A M.R.S.A. § 4452(1), or the State under 38 M.R.S.A. § 342(7), if the person files with the court when first appearing a written authorization from the municipal officers or the Commissioner of the Department of Environmental Protection, as appropriate, and a current certificate of familiarity with court procedures awarded under a program established by the Commissioner of Human Services as provided in 30-A M.R.S.A. § 4221(2).

(i) Standard of Proof. Adjudication of an alleged land use violation shall be by a preponderance of the evidence.

(j) Appeal. A party entitled to appeal may do so as in other civil actions.

(k) Alternative Dispute Resolution. Alternative Dispute Resolution, as agreed to by the parties or as required by law, shall be conducted pursuant to the processes specified in Rule 92.

## RULE 80L. JURY TRIAL DE NOVO IN SMALL CLAIMS APPEALS TO THE SUPERIOR COURT

(a) Applicability. This rule governs proceedings in jury trials de novo on appeal to the Superior Court from judgments of the District Court in small claims actions. The other provisions of the Rules of Civil Procedure do not apply to such proceedings except as provided in this rule.

(b) Scope; Service and Filing of Papers; Time; Motions. Rules 1, 2, 5, 6, 7(b), 11, and 15(b) of these rules apply to jury trials de novo in small claims appeals, so far as applicable. All notices given to the defendant shall be sent by ordinary mail addressed to the post office address of the defendant set forth on the notice of appeal.

(c) Pretrial and Trial Proceedings.

(1) *Determination on Affidavits.* When the record in a small claims appeal in which jury trial de novo has been demanded is received in the Superior Court, the clerk shall immediately notify the parties. The plaintiff may, within 10 days after the mailing of such notification, file a counteraffidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which a notice was filed under Rule 11(a) of the

Maine Rules of Small Claims Procedure. The court shall thereupon review the affidavits of both parties, together with the entire record on appeal, and shall determine whether the defendant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(2) *Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that defendant has shown in light of the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a pretrial conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40(a).

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(3) *No Genuine Issue of Fact: Disposition.* If the court finds that defendant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal, and further proceedings shall be had as provided in subdivision (d) of this rule; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in Rule 11 of the Maine Rules of Small Claims Procedure.

(4) *Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the defendant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its

own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (3) of this subdivision.

(5) *Continuances; Dismissal.* Rules 40(b) and (c) and 41 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(6) *Evidence.* Rules 43, 44, 44A, 45, and 46 of these Rules, and the Maine Rules of Evidence, apply to jury trials de novo in small claims appeals, so far as applicable.

(7) *Jurors; Majority Verdict; Submission to the Jury.* Rules 47, 48, 50, and 51 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(d) Judgment.

(1) *Rules Applicable.* Rules 54, 54A, 55, 58, 59, 60, 61, 62, and 63 of these rules apply to jury trials de novo in small claims appeals so far as applicable.

(2) *Amount of Judgment.* In no event shall the judgment entered exceed the statutory amount exclusive of interest and costs.

(3) *Interest.* A money judgment entered on a verdict shall bear interest at the post-judgment rate provided by law only from the date of the entry of judgment in the Superior Court.

(4) *Mandate.* Upon entry of judgment in the Superior Court, the court shall thereupon remand the case to the District Court from which it originated for entry of a like judgment, and for any further proceedings.

(e) Appeal to the Law Court. A party entitled to appeal to the Law Court from a decision of the Superior Court may do so as in other civil actions.

(f) Miscellaneous Provisions. Rules 77, 78, 79, 81, 82, 83, 84, 85, 86, 89, 90, and 91 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

## RULE 80M. MEDICAL MALPRACTICE SCREENING PANEL PROCEDURES

**(a) Applicability and Confidentiality.** This rule applies to medical malpractice screening panel proceedings under the Maine Health Security Act, 24 M.R.S. § 2851, et seq. This rule supersedes the general provisions of the Maine Rules of Civil Procedure only to the extent that this rule provides otherwise. Medical malpractice screening panel proceedings shall be confidential.

**(b) Commencement of Screening Panel Proceedings.**

(1) *Notice of Claim.* A medical malpractice screening panel proceeding shall be commenced by a notice of claim in the same manner as a civil complaint. In addition to the form and content of the notice required by statute, an attorney representing a claimant shall sign the notice of claim as attorney. The notice of claim shall state the name, address and telephone number of the claimant's attorney or of the self-represented claimant.

(2) *Appointment of the Panel Chair.* Upon the filing of a notice of claim, the clerk shall notify the Chief Justice of the Superior Court, who shall appoint a Panel Chair. The Panel Chair shall be responsible for the further conduct of the proceedings.

(3) *Objections to the Panel Chair.* Objections to the Panel Chair appointed shall be made by motion to the Chief Justice within 7 days of the appearance of all respondents.

(4) *Objections to Conduct of the Panel Chair.* A party seeking relief for cause arising from the conduct or inaction of the Panel Chair shall promptly state the objection by letter to the Chief Justice of the Superior Court.

(5) *Notice of Appearance of Respondent.* Each respondent shall file a notice of appearance that shall state the name, address and telephone number of the respondent's attorney or of the self-represented respondent.

(6) *Fees and Filing of Papers.* All fees required by statute or by court rule or order shall be paid and all papers shall be signed as required by Rule 5 (f). A fee is not required to be paid when required if the party files a motion for waiver of the fee pursuant to Rule 91. The Panel Chair may order that a fee be waived if permitted by statute or rule. If a motion for waiver of a fee is denied, the Panel Chair shall order a time for the prompt payment of the fee.

**(c) Screening Panel Scheduling Order.** The parties shall promptly confer on a schedule for exchanging medical records and for the future conduct of the proceedings, and they shall promptly advise the Panel Chair of any agreements on a proposed scheduling order. Within 7 days of the appearance of all respondents, a party may request a scheduling conference with the Panel Chair. If a scheduling conference has been requested, the conference shall be held within 14 days and a scheduling order shall be entered within 7 days of the conference. If no scheduling conference has been requested, the Panel Chair shall, within 14 days of the appearance of all respondents, enter a scheduling order. The scheduling order shall set deadlines for discovery, motions, the designation and depositions of experts, the date by which the parties shall be ready for hearing, and such other matters as the Panel Chair may require. The scheduling order shall comply with the applicable statutory deadlines and shall not be modified except on motion to the Panel Chair for good cause. Extensions of time may be granted by the Panel Chair only on motion for good cause made before the expiration of the deadline to be extended.

**(d) Discovery.** Discovery shall be conducted and disputes resolved by the Panel Chair in the same manner and with the same effect as in civil actions in the Superior Court.

**(e) Motions.** Motions shall be filed with the court and served on the Panel Chair. The Panel Chair shall determine those motions that are within the jurisdiction of the screening panel or that the parties have agreed by filed

stipulation that the Panel Chair may decide. The Panel Chair may, before the panel hearing, order the parties to resolve by motion in the Superior Court legal defenses or issues outside the jurisdiction of the screening panel. If the Panel Chair decides that a motion is outside the jurisdiction of the screening panel, the Panel Chair shall refer the motion to the Chief Justice of the Superior Court for assignment to a justice of the Superior Court.

**(f) Waiver of the Panel Hearing.** The panel hearing may be waived at any time by stipulation signed by all parties and filed with the court. If a Panel Chair fails or is unable to appoint qualified panelists for a panel hearing to be held within the time required by statute, the Panel Chair or any party may apply to the Chief Justice for relief, which may include a waiver of the panel hearing by order finding that a qualified panel cannot be appointed to hold a panel hearing within the time required by statute. A waiver of the panel hearing terminates the screening panel proceedings in the Superior Court.

**(g) Panel Hearing.**

(1) *Appointment of Panelists.* The Panel Chair shall appoint at least one legal and one medical panelist. The Panel Chair may consult with the parties and others to locate potential panelists. Prior to appointment of a panelist, the Panel Chair shall inquire of a potential panelist whether the panelist has any personal or professional relationship to the parties, attorneys, witnesses or issues that could reasonably be expected affect the panelist's fairness and independent judgment, and shall inform the panelist of the confidential and serious nature of the proceedings. The Panel Chair shall notify the parties of the appointment of the panelists and shall disclose any relationship to the parties and expert witnesses or any other source of potential conflict or bias identified during the Panel Chair's inquiry of the panelist.

(2) *Objections to Panelists.* Objections for cause to proposed or appointed panelists shall promptly be directed to the Panel Chair. No ex parte communication with the Panel Chair or any panelist may be had on any substantive matter relevant to the proceedings.

(3) *Time, Place and Schedule for Panel Hearing.* After soliciting comment from the parties, the Panel Chair shall set a hearing date at least 60 days in advance and shall notify the parties of the date and location for the panel hearing. The Panel Chair shall make a reasonable effort to schedule the hearing to permit the parties and witnesses to attend in person. The panel hearing shall not be scheduled for more than one day or continued except on motion for good cause. The panel hearing shall be conducted in a courthouse or such other neutral location as the Panel Chair may select.

(4) *Prehearing Conference.* The Panel Chair may order a prehearing conference, which may be conducted by telephone or electronic communication. The parties shall be prepared to disclose and discuss the identity of witnesses and manner of presentation of testimony, the exhibits, medical literature, and deposition testimony to be offered, the time required for the presentations of the parties, the nature of any unusual legal or factual issues the Panel Chair may address or prepare in advance of the hearing, and the likelihood of scheduling or other problems that could affect the efficient conduct of the hearing. Motions in limine shall be filed with the court and served on the Panel Chair 14 days before the hearing.

(5) *Submissions to the Panel.* The Panel Chair may order the parties to submit to the panel in advance of the hearing briefs, medical records, depositions, exhibits, and such other material as the Panel Chair may direct.

(6) *Recording of Panel Hearing.* With notice to the other parties and to the panel chair, a party may, at that party's expense, arrange for the panel hearing to be recorded for transcription in the same manner as for depositions under Rule 30 (b)(4). Only one recorder or reporter shall be permitted. If more than one party has arranged for the hearing to be recorded, the Panel Chair shall select a person to record the hearing and the parties requesting the recording shall equally share the cost. At the hearing, the Panel Chair shall instruct the person recording or reporting the hearing that the proceedings are confidential, that recording or reporter's notes shall be preserved by the reporter, and that no transcript of the hearing may be prepared without an order of the court.

(7) *Conduct of the Panel Hearing.* The Panel Chair shall conduct the hearing and make such rulings and orders as will promote the fair, efficient and inexpensive determination of the issues, including a reasonable allocation of the hearing time allowed the parties for their presentations.

(A) The Hearing. The panel hearing shall be closed to the public, unless otherwise stipulated by all parties, and shall be conducted so as to respect the serious nature of proceedings in a formal legal forum. The Maine Rules of Evidence shall not apply, but admitted evidence shall only be of a kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Panel Chair may exclude evidence that is irrelevant, unreliable, cumulative or unfairly prejudicial to a party. Witnesses shall swear or affirm to tell the truth.

(B) Presentation of Testimony. The parties shall have the right to examine and cross-examine witnesses. The Panel Chair shall not permit long narrative answers that prejudice another party's right to object to inadmissible testimony. With notice prior to hearing, in the absence of unfair prejudice to any opposing party and on such conditions as the Panel Chair may order, witnesses may be called by deposition or by telephone or video conference, and parties may submit an affidavit, summary of evidence or written report in lieu of testimony, regardless of a witness's availability for appearance at the hearing. Such prior notice shall be given at a time and in a manner sufficient to permit the opposing party a meaningful opportunity to respond.

(C) Questions by the Panel. Except to for the limited purpose of clarifying testimony, questions by the panelists shall be deferred until after the parties have completed their examinations.

(D) Opening and Closing Statements. The parties may make opening or closing statements as permitted by the Panel Chair.

(8) *Settlement and Mediation.* The Panel Chair shall discuss with the parties the opportunity for settlement or mediation of the claim without the necessity of a hearing or findings. The Panel Chair may mediate the claim to the extent agreed by the parties in a filed stipulation.

(9) *Deliberations and Findings.* At the conclusion of the hearing, the panelists shall deliberate in confidential session and make the findings required by statute on a form provided by the Panel Chair. The panel shall make its findings based on the issues and evidence presented at the hearing.

(10) *Evidence and Proceedings Confidential.* Unless otherwise stipulated by the parties with the approval of the Panel Chair, the proceedings, evidence and findings in the panel hearing shall be confidential to the extent required by statute or by order of the court.

(11) *Determination of Claim or Damages in Certain Screening Panel Proceedings.* The parties may stipulate to submit the entire claim for binding determination by the panel. If liability is admitted, the parties may stipulate that the screening panel shall determine damages.

**(h) Sanctions.** For failure to prosecute or to comply with any scheduling order or other order of the Panel Chair or the court, the Panel Chair may for good cause impose sanctions on a party or an attorney after notice and opportunity for hearing. Sanctions may include conclusion of the panel proceeding with or without findings against the offending party or an order to proceed to Superior Court without findings. An order for sanctions shall be written and shall state the grounds for the sanctions and the specific sanctions imposed. Sanctions may be reviewed by the Chief Justice of the Superior Court pursuant to subdivision (b) (4) of this rule.

**(i) Dismissal.** A claimant may dismiss the notice of claim with or without prejudice at any time before the appointment of all panelists under this rule or by stipulation of all parties who have appeared in the screening panel

proceeding. Otherwise, a screening panel proceeding may be dismissed with or without prejudice only on written order of the Panel Chair.

## XII. GENERAL PROVISIONS

### RULE 81. APPLICABILITY OF RULES

(a) To What Proceedings Fully Applicable. These rules apply to all proceedings in suits of a civil nature in the District Court, in the Superior Court, or before a single justice of the Supreme Judicial Court, with the exceptions set forth in subdivision (b) of this rule. They apply to civil proceedings in the Superior Court on removal or appeal from the District Court. A civil action under these rules is appropriate whether the suit is cognizable at law or in equity and irrespective of any statutory provisions as to the form of action.

(b) Limited Applicability.

(1) *Superior Court.* These rules do not alter the practice prescribed by the statutes of the State of Maine or the Maine Rules of Criminal Procedure or the Maine Bar Rules for beginning and conducting the following proceedings in the Superior Court or before a single justice of the Supreme Judicial Court:

(A) Proceedings for post-conviction relief in criminal actions or under the writ of habeas corpus.

(B) [RESERVED]

(C) Proceedings governed by the Maine Bar Rules.

(D) Applications for naturalization, judicial declarations of citizenship, or any other ex parte proceeding.

(E) Applications by any governmental agency, department, board, commission, or officer to enforce a subpoena, to compel the production of documents, or to require answer to pertinent questions.

(F) Proceedings with respect to contested elections for county or municipal office.

In respects not specifically covered by statute or other court rules, the practice in these proceedings shall follow the course of the common law, but shall otherwise conform to these rules, except that depositions shall be taken or interrogatories served only by order of the court on motion for cause shown.

Review by the Law Court, to the extent that review of any such proceeding is available, shall be by appeal or report in accordance with these rules, except that any such review in proceedings with respect to contested elections for county or municipal office shall conform to the procedure specified by statute therefor.

(2) *District Court.* These rules do not apply to the beginning and conducting of the following actions and proceedings in the District Court:

(A) Actions under the statutory small claims procedure except as incorporated expressly or by analogy in the Maine Rules of Small Claims Procedure.

(B) Ex parte proceedings.

(C) [Abrogated.]

(D) Proceedings for commitment or recommitment of persons mentally ill.

(E) [RESERVED]

(F) Proceedings in the Juvenile Court.

Review by the Superior Court in all these proceedings and actions, except proceedings in the Juvenile Court, shall be by appeal in accordance with these rules except as modified for actions under the statutory small claims procedure by the Maine Rules of Small Claims Procedure.

(c) Scire Facias and Certain Extraordinary Writs Abolished. The writs of scire facias, mandamus, prohibition, certiorari, and quo warranto are abolished. Review of any action or failure or refusal to act by a governmental agency, including any department, board, commission, or officer, shall be in accordance with procedure prescribed by Rule 80B. Any other relief heretofore available by any of such writs may be obtained by appropriate action or motion under the

practice prescribed by these rules. In any proceedings for such review or relief in which an order that an agency or other party do or refrain from doing an act is sought, all provisions of these rules applicable to injunctions shall apply.

(d) Other Writs Abolished. Writs of waste, dower, partition and account are abolished. In any action for relief or damages because of waste, or for dower, partition or account, the practice and procedure, including the summons, shall be as in other civil actions.

(e) Terminology in Statutes. In applying these rules to any proceeding to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules or inappropriate under these rules, shall be taken to mean the device or procedure proper under these rules.

(f) When Procedure Is Not Specifically Prescribed. When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the State of Maine, these rules or any applicable statutes.

## RULE 82. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the District Court, the Superior Court, or the Supreme Judicial Court or the venue of actions therein.

## RULE 83. DEFINITIONS

Unless specified to the contrary, the following words whenever used in these rules shall have the following meanings:

(1) The word "court" shall include any judge of the District Court, any justice of the Superior Court and any single justice of the Supreme Judicial Court.

(2) The word "clerk" shall mean the clerk of courts in and for the county or division in which the action is pending.

(3) The term "plaintiff's attorney" or "defendant's attorney" or any like term shall include the party appearing without counsel and the word "plaintiff" or "defendant" or any like term shall include the party appearing with counsel.

(4) The term "reporter" shall mean a court reporter or a transcriber of an electronically recorded record.

## RULE 84. FORMS

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.

## RULE 85. TITLE

These rules may be known and cited as the Maine Rules of Civil Procedure.

## RULE 86. EFFECTIVE DATE

(a) Effective Date of Original Rules. These rules took effect on December 1, 1959. They govern all proceedings in actions brought after they took effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules took effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Abrogation of Maine District Court Civil Rules. The Maine District Court Civil Rules were abrogated effective July 1, 1987, and these rules have been amended to govern actions brought in the District Court after that date and also all further proceedings in actions then pending, except as provided in subdivision (c) of this rule.

(c) Effective Date of Amendments. Amendments to these rules will take effect on the day specified in the order adopting them. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work injustice, in which event the former procedure applies.

## RULE 87. PUBLICATION OF ORDERS AND STANDARDS

All administrative orders, standards, procedures, schedules and forms promulgated or established by the Supreme Judicial Court or any of its Justices, the

Chief Justice of the Superior Court or the Chief Judge of the District Court that are generally applicable to civil actions shall be published by them and made available to all clerks of court and all members of the bar.

## RULE 88. [REPEALED]

## RULE 89. WITHDRAWAL OF ATTORNEYS; VISITING LAWYERS; TEMPORARY PRACTICE WITH LEGAL SERVICES ORGANIZATIONS

(a) Withdrawal of Attorneys. An attorney may withdraw from a case in which the attorney appears as sole counsel for a client, by serving notice of withdrawal on the client and all other parties and filing the notice, provided that (1) such notice is accompanied by notice of the appearance of other counsel, (2) there are no motions pending before the court, and (3) no trial date has been set. Unless these conditions are met, the attorney may withdraw from the case only by leave of court. A motion for leave to withdraw shall state the last known address of the client and shall be served on the client in accordance with Rule 5. This subdivision shall not apply to a limited appearance filed under Rule 11(b) unless the attorney seeks to withdraw from the limited appearance itself.

(b) Visiting Attorneys. Any member in good standing of the bar of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with the out-of-state attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court. Visiting attorneys shall not be permitted to file limited appearances.

(c) Attorneys Practicing With Legal Services Organizations. Any member in good standing of the Bar of any other state or of the District of Columbia who becomes employed by a legal services organization based in this State that is funded from state, federal or recognized charitable sources and provides legal assistance to indigents in civil matters, may be permitted to practice before the courts of this State subject to the provisions of this Rule. Attorneys permitted to practice under this Rule are not, and shall not represent themselves to be, members of the bar of this State, and shall not practice law in Maine outside of the scope of

the attorney's employment with a legal services organization based in Maine. Practice under this Rule shall be subject to the following conditions:

(1) An application for temporary permission to practice law in this State under the provisions of this Rule shall be filed with the Clerk of the Law Court, and shall be accompanied by:

(A) a certificate of the highest court of another state certifying that the attorney is a member in good standing in the bar of that court; and

(B) a statement signed by the executive director or chief executive officer of the legal services organization that the attorney (i) is currently employed by the organization, and (ii) has expressly agreed not to practice law in Maine outside of the scope of the attorney's employment with the legal services organization.

(2) An attorney is permitted to practice subject to the provisions of this rule on the date that the application for temporary permission to practice law is approved by a single justice of the Supreme Judicial Court. An attorney's permission to practice subject to the provisions of this Rule shall be effective only when a copy of the Court's approval is filed with the Board of Overseers of the Bar and shall remain in effect for the time specified in the application, but not to exceed two years from the date the application is approved.

(3) Permission to practice under this Rule shall terminate whenever the attorney ceases to be employed by the legal services organization. When an attorney permitted to practice under this Rule ceases to be so employed, the attorney shall file a statement to that effect with the Clerk of the Law Court and the Board of Overseers of the Bar.

(4) An attorney permitted to practice temporarily under this Rule shall perform no legal services within the State except for clients aided by the legal services organization by which the attorney is employed and for such purposes only, and the attorney shall not accept any compensation for such services, except such salary as may be paid by the legal services organization, or by a governmental body or charitable institution to enable the attorney to work for the legal services organization.

(5) All pleadings signed by an attorney permitted to practice under this Rule shall bear the name and office address, and be signed on behalf of, an attorney

supervisor of the organized legal services organization concerned, who shall be an attorney fully licensed to engage in the general practice of law within this State.

(6) Attorneys permitted to practice temporarily under this Rule are subject to the Maine Bar Rules and may be disciplined or suspended from practice in the manner now or hereafter provided by rule for the discipline or suspension of attorneys generally.

## RULE 90. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Permitted Activities. An eligible student may appear in court, in any civil action, or before any administrative tribunal in this State, on behalf of any indigent person receiving legal services through an organization providing legal services to the indigent, which organization has been approved by the Supreme Judicial Court, if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance. An eligible student may appear in court in any civil action or before any administrative tribunal in this State on behalf of the State or an agency thereof with the written approval of the lawyer who is supervising the student in that appearance.

The written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge or justice of the court or the presiding officer of the administrative tribunal.

(b) Requirements and Limitations. In order to be an eligible law student under this rule, the student must:

(1) Be duly enrolled in a law school approved by the American Bar Association.

(2) Have completed legal studies amounting to at least four (4) semesters.

(3) Be certified by the dean of the student's law school as being of good character and competent legal ability, as being adequately trained to perform as a legal intern and as having met the other requirements of this subdivision (b).

(4) Neither ask for nor receive any compensation or remuneration of any kind for services from the person on whose behalf such services are rendered,

but this shall not prevent a legal aid bureau, law school, or the State from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(5) Certify in writing that the student has read and is familiar with the Maine Bar Rules, the Maine Rules of Civil Procedure, the Maine Rules of Criminal Procedure, the Maine Rules of Appellate Procedure, and the Maine Rules of Evidence.

(c) Approved Organization. Upon application of any organization located in this State providing free legal services to indigents in this State for permission to allow eligible law students to practice under its supervision pursuant to this rule, the Supreme Judicial Court may grant permission by filing an order authorizing such practice with the Clerk of the Law Court.

(d) Certification. Certification of a student by the law school dean:

(1) Shall be filed with the Clerk of the Law Court.

(2) May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of the Law Court. It is not necessary that the notice state the cause for withdrawal.

(3) May be terminated by the Supreme Judicial Court without notice or hearing and without any showing of cause. Notice of such termination shall be filed with the Clerk of the Law Court.

The dean may refuse certification of a law student to practice in a position which the dean considers of insufficient educational benefit to the student.

(e) Other Activities. Subject to the limitation of subdivisions (b) and (c) of this rule.

(1) An eligible law student may also engage in other activities authorized by law, under the general supervision of a member of the bar of this State, but outside the personal presence of that lawyer, including:

(i) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

(ii) Preparation of briefs and other documents to be filed in the Law Court in any matter in which the student is eligible to appear, but such documents must be signed by the supervising lawyer.

Each pleading, document or brief must contain the name of the eligible law student who has participated in drafting it. If the student has participated in drafting only a portion of it, that fact may be mentioned.

(2) An eligible law student may participate in oral argument in the Law Court in any matter in which the student is eligible to appear, but only in the presence of the supervising lawyer.

(f) Supervision. The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

(1) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(2) Assist the student in preparation to the extent the supervising lawyer considers it necessary.

(g) Miscellaneous. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that the person might lawfully do prior to the adoption of this rule.

## RULE 91. PROCEEDINGS IN FORMA PAUPERIS

(a) Application. Any person who intends to bring a civil action under these rules, or to file any motion requiring service under Rule 4, may, without fee, file an application in the court in which such action is to be brought asking for leave to proceed in forma pauperis. Such application shall be accompanied by an affidavit of the plaintiff or moving party setting forth (i) the person's monthly income and necessary monthly expenses; (ii) that the person possesses no other source from which filing or service fees may reasonably be paid; (iii) if the person is receiving poverty-based public assistance income, identify the government program and the nature and the duration of the assistance; and (iv) that the action is brought, or the motion filed, in good faith.

(b) Waiver of Filing Fee. An application for waiver of the filing fee shall be filed with the complaint. The action shall thereupon be entered upon the docket. If the court finds that the action is not frivolous and has been brought in good faith, and if the plaintiff is without sufficient funds to pay the filing fee, it shall order that the fee be waived. There shall be a presumption that a moving party is without sufficient funds if the moving party's affidavit states that the person's income is derived from poverty-based public assistance programs. If the court denies the application, the action shall be dismissed without prejudice, unless within seven days after the denial the plaintiff pays the fee to the clerk.

(c) Payment of Service Costs. An application for payment of service costs shall be filed with the complaint or motion. If the court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs to be paid as an administrative expense of the Superior Court or the District Court as the case may be.

(d) Costs; Reimbursement. If the plaintiff or moving party prevails, any fee or costs paid under subdivision (b) or (c) of this rule may be taxed as costs against the opposing party in favor of the state, if the court finds that that party is able to pay such fee or costs. Before accepting a complaint for filing with the fee waived or disbursing funds for service costs, the clerk shall cause the plaintiff or moving party to sign an agreement to reimburse any fee or costs so waived or paid, if at any time during the pendency of the action the party becomes or is discovered to be financially able to make such reimbursement. The State Court Administrator is authorized to proceed by execution or action to recover for the appropriate court account all fees or costs which any party becomes liable to pay or reimburse under

this subdivision, if such payment or reimbursement is not made voluntarily upon demand.

(e) Removal From the District Court. Any defendant or other party who intends to remove an action from the District Court to the Superior Court under Rule 76C may move for leave to proceed in forma pauperis. The motion shall be filed with the party's answer or reply, and shall be accompanied by the affidavit required by subdivision (a) of this rule. If the court finds that the defense of the party seeking removal is made in good faith, and that the party is without sufficient funds to pay the fees and costs required by Rule 76C, it shall order that those fees and costs be waived and that the clerk forward the action to the Superior Court, where the action shall be entered, and shall proceed as though the fees had been paid.

(f)(1) Appeal From District or Superior Court. A party seeking to appeal to the Superior Court or the Law Court may file or renew an application for leave to proceed in forma pauperis as provided in subdivision (a) of this rule. If the court from which the appeal is taken finds that the appeal is brought in good faith and is not frivolous and that the applicant is without sufficient funds to pay all or part of the costs of entering the appeal, it shall order all or part of those costs to be waived or paid as an administrative expense of the District or Superior Court as the case may be. The court may enter such orders limiting the record on appeal as it deems appropriate. The provisions of subdivision (d) of this rule apply to proceedings under this subdivision.

(f)(2) Copy of Electronic Recording. When the hearing that is subject to the appeal was electronically recorded, and the court finds that all or a portion of the transcript of the hearing is necessary to support the appeal, a copy of the recording of the hearing, in lieu of a paper transcript, shall be filed as part of the record pursuant to M.R. App. P. 6, except that a paper transcript shall be prepared for any child protective proceeding on appeal from the District Court. When the hearing that is subject to the appeal was recorded by an official court reporter, the court shall not pay for a transcript to support the appeal, and the court shall direct the parties to prepare and submit to it an agreed statement of the record pursuant to M.R. App. P. 5(f).

## RULE 92 COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE

This rule shall govern the operation of the Court Alternative Dispute Resolution Service established pursuant to 4 M.R.S. § 18-B.

(a) Alternative Dispute Resolution in General Civil Actions.

(1) *Rule 16B Referrals in the Superior Court*. Unless exempted, all contested civil actions filed in or removed to the Superior Court are subject to the alternative dispute resolution (ADR) process specified in Rule 16B.

(2) *Referees*. Rule 53 governs reference of cases in the Superior Court or the District Court, including reference of family matters.

(3) *CADRES Referrals Not Otherwise Governed*. By agreement of the parties or in the court's discretion upon a finding of good cause, any civil action not otherwise governed or exempted by statute, rule, or order, may be referred to ADR through the Court Alternative Dispute Resolution Service ("CADRES") or another ADR agreed to by the parties. The following applies to civil actions referred to ADR through CADRES:

(A) *Administrative Fee*. If the referral is made through CADRES, the parties shall pay an administrative fee, which shall be shared equally by the parties and paid to the clerk, unless in forma pauperis status has been granted pursuant to Rule 91;

(B) *Notification to CADRES*. Upon payment of the administrative fee, the clerk shall notify CADRES of payment and send a copy of the referral order to CADRES;

(C) *Selection of Provider*. Except when proceeding pursuant to Rule 16B or Rule 53**,** in actions referred to mediation or another form of ADR through CADRES**,** the parties shall select their ADR provider from the roster approved by CADRES;

(D) *Date and Location of ADR*. Once selected, the ADR provider shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. ADR may take place at a courthouse, if space is available and if authorized by the clerk; and

(E) *Compensation to Provider*. The parties and the ADR provider shall negotiate and agree on compensation for services, and such compensation shall be paid directly to the ADR provider.

(b) Mediation of Family Matters.

(1) *Mediation Required*. All contested divorce, parental rights, judicial separation, and child support actions shall be referred to mediation, unless mediation is waived pursuant to 19-A M.R.S. § 251(2)(B).

(2) *Mediation Optional*. Actions for visitation rights of grandparents, emancipation of minors, paternity, and motions to modify a preliminary injunction, motions to enforce a judgment, and motions for contempt may be referred to mediation.

(3) *Mediation Not Available*. Protection from abuse and protective custody actions (other than those that may be specially referred or included in a pilot mediation program) are not subject to referral to mediation.

(4) *Court Defined*. As used in this subdivision (b) of the Rule, the term "Court" includes a Justice, Judge or Family Law Magistrate.

(5) *CADRES Referral*. In all contested family matters referred to mediation through CADRES, the following shall apply:

(A) *Date and Location of Mediation*. Mediation shall occur prior to the assignment of a hearing date unless otherwise ordered by the court. Mediation shall be scheduled to occur within 28 days of the order for mediation, unless otherwise ordered by the court. Mediation shall be held at a courthouse, unless otherwise authorized by the court or the Director of CADRES;

(B) *Mediation Fee*. A mediation fee as set by the court shall be paid by the date ordered, which shall be before the mediation or when mediation is requested by a party. The fee entitles the parties to two mediation sessions. An additional mediation fee is due for any further mediation. When a mediation session is not held due to failure of one or more participants to appear, the court may reschedule the mediation session at no additional cost and/or impose sanctions. No mediation fee is required for mediation of motions solely to enforce child support orders or when mediation is requested by the Department of Health and Human Services;

(C) *Apportionment and Payment of Mediation Fee*. The mediation fee shall be shared equally by the parties, unless otherwise ordered by the court. In ordering

payment of the mediation fee, the court shall specify the amount due by each party with a payment date;

(D) *Assignment of Mediators*. Mediators on the Domestic Relations Mediation Roster shall notify the clerk of the courts to which they are assigned by CADRES of the dates and times at which they are available to mediate. The clerks shall assign mediation to eligible rostered mediators on a rotating basis that is generally equitable over time. If a party or attorney requests assignment of a specific mediator, the clerk shall attempt to honor that request to the extent practicable. If a party or attorney objects to the assignment of a certain mediator, the clerk shall honor that request and assign a different mediator. At least twice annually, CADRES shall supply to every District Court a current list of mediators on the Domestic Relations Mediation Roster for that court;

(E) *Attendance at Mediation*. Each party and their attorney, if any, shall be present at mediation and shall make a good faith effort to mediate all disputed issues. In exceptional circumstances, a party may participate by telephone with the prior approval of the court. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions;

(F) *Exchange of Information*. If any financial issues, including child support, spousal support, or property division are contested, each party shall complete and file with the court, with a copy to the other party, a properly completed Child Support Affidavit, Child Support Worksheet and Financial Statement. When required, these documents shall be filed with the court at least three (3) business days prior to the scheduled mediation; and

(G) *Continuances*. A party requesting a continuance of a mediation session shall file a written motion with the clerk at least four (4) days in advance of the scheduled mediation, and shall otherwise comply with the requirements of Rule 40(c), including the requirement that the motion to continue or cancel a scheduled mediation must be filed immediately after the cause or grounds becomes known. All continuance requests shall be heard and ruled on by the court. A mediator may not grant a continuance for mediation or reschedule a mediation session.

(c) Mediation of Small Claims.

(1) *Mediation Required*. The parties to all Small Claims cases may be required to participate in mediation as ordered by the court. This requirement does

not apply to Small Claims disclosure actions, which are not subject to referral to mediation.

(2) *Date and Location of Mediation*. Mediation shall take place on the hearing date, unless all parties agree to hold mediation prior to the hearing date, and CADRES is able to arrange for mediation. Mediation shall take place at a courthouse, unless otherwise authorized by the court or the CADRES Director.

(3) *Mediation Fee*. The mediation fee is included in the small claims filing fee, and no additional fee is required for mediation.

(4) *Assignment of Mediators*. The clerk of court, or a designee, shall notify CADRES of all dates on which the Small Claims docket is to be scheduled, as well as any subsequent scheduling changes. CADRES shall assign one or more mediators to provide mediation services at every scheduled Small Claims docket. At least twice annually, CADRES shall supply to every District Court a current list of Small Claims mediation assignments, as well as a current list of mediators on the Small Claims Mediation Roster.

(5) *Continuances*. All requests for continuance of mediation or a hearing date shall be presented to and ruled on by the court. A mediator may not grant a continuance for mediation or a hearing date in a Small Claims case.

(d) Mediation of Land Use and Natural Gas Pipeline Matters.

(1) *Referral to Mediation*. All requests for mediation of land use or natural gas pipeline matters pursuant to 5 M.R.S. §§ 3341 or 3345 shall be referred to CADRES upon the filing of an application with the Superior Court as required by 5 M.R.S. §§ 3341(4) and 3345(4). The original application will be docketed and retained by the clerk in an "SA" file, and a copy sent to the CADRES Director. In addition to these statutory land use matters, any case involving a land use dispute may be referred to CADRES at the discretion of the court or on request of the parties.

(2) *Date and Location of Mediation*. Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(3) *Mediation Fee*. The fee for the initial land use and natural gas pipeline mediation session is payable by the landowner who submits the application. Additionally, the CADRES Director shall determine the cost of providing notice, if any, which the landowner shall pay prior to the scheduling of mediation. If subsequent mediation sessions occur, the parties and mediator shall agree on an appropriate fee arrangement.

(4) *Selection of Mediator*. The parties shall choose their mediator from the Land Use and Environmental Mediation Roster list provided by CADRES. A list of mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(e) Mediation of Environmental Enforcement Actions.

(1) *Referral*. All requests for mediation pursuant to 38 M.R.S. § 347-A shall be referred to CADRES upon the receipt of a request from a party.

(2) *Mediation Fee*. A fee for environmental enforcement mediation shall be paid. If an action pursuant to Rule 80K is not already pending, the additional applicable filing fee is required. Notwithstanding the general exemption for state agencies from payment of fees, the State of Maine Department of Environmental Protection (DEP) shall pay one-half of the fee and may pay the entire fee. The DEP is exempt from payment of any filing fee.

(3) *Selection of Mediator*. The parties shall choose their mediator from a Land Use and Environmental Mediation Roster provided by CADRES. A current listing of the mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(4) *Date and Location of Mediation*. Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(f) Mediation in Forcible Entry and Detainer Actions.

(1) *Mediation Required*. The parties to all Forcible Entry and Detainer actions may be required to participate in mediation as ordered by the court. The

court may not order mediation if no mediator is available on the hearing date or if mediation would delay the hearing.

(2) *Date and Location of Mediation*. Mediation shall take place on the hearing date, unless all parties agree to hold mediation prior to the hearing date, and CADRES is able to arrange for mediation. Mediation shall take place at a courthouse, unless otherwise authorized by the court or the CADRES Director.

(3) *Mediation Fee*. The mediation fee is included in the filing fee.

(4) *Assignment of Mediators*. The clerk of court, or a designee, shall notify CADRES of all dates on which the Forcible Entry and Detainer docket is to be scheduled, as well as any subsequent scheduling changes. CADRES shall assign one or more mediators to provide mediation services at every scheduled Forcible Entry and Detainer docket. At least twice annually, CADRES shall supply to every District Court a current list of Forcible Entry and Detainer mediation assignments, as well as a current list of mediators on the Forcible Entry and Detainer Mediation Roster.

(5) *Continuances*. All requests for continuance of mediation or a hearing date shall be presented to and ruled on by the court. A mediator may not grant a continuance for mediation or a hearing date.

(g) Sanctions.

If a party or party's attorney fails to appear at mediation or other ADR process scheduled pursuant to this Rule, or fails to comply with any other requirement of this Rule or any court order issued pursuant to this rule, the court may, upon motion of a party or on its own motion, order the parties to submit to mediation or other ADR, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or attorney, or both, to pay reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the court finds that an award would be unjust in the circumstances.

**[Chapter XIII of these Rules is effective January 1, 2009.]**

# XIII. FAMILY DIVISION

## RULE 100. SCOPE OF THE FAMILY DIVISION RULES

The rules in this chapter shall govern procedure in the District Court and, where applicable, procedure on post-judgment motions in the Superior Court, in all actions for divorce, annulment, judicial separation, paternity or parentage, parental rights and responsibilities, child support, emancipation, visitation rights of grandparents, and any post-judgment motions arising from these actions. The District Court shall have exclusive jurisdiction over such actions, except that (1) any issue on which there is a constitutional right to a trial by jury may be heard and decided by a jury in the Superior Court upon a proper and timely request for transfer in accordance with Rule 76, and (2) the Superior Court may continue to hear post-judgment motions in actions that were pending or concluded in the Superior Court on or before December 31, 2000 and have not been transferred to the District Court. Reference to the court within this chapter includes District Court Judges, Superior Court Justices, and Family Law Magistrates, unless otherwise specified.

The Maine Rules of Civil Procedure shall govern all matters not addressed in these Family Division Rules.

The rules in this chapter shall be construed to provide a system of justice that is responsive to the needs of families and the support of their children.

## RULE 100A. FORM OF ACTION

An action under these Family Division Rules shall be known as a Family Division action, docketed as a Family Matter (FM).

## RULE 101. COMMENCEMENT OF ACTION

(a) Filing. Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court

where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

(b) Complaint, Petition or Motion Form. In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence.

(c) Minor as a Party. Notwithstanding the provisions of Rule 17(b), a minor party to any action under this chapter need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Nothing in this rule shall be construed to change the current and limited matters in which a minor may be a party to the action.

## RULE 102. CONFIDENTIALITY

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or minor child would be jeopardized by disclosure of identifying information appearing in any document filed with the court, the clerk shall seal the identifying information and shall not disclose the information to any other party or to the general public. Disclosure may be ordered only after a hearing in which the court takes into consideration the health, safety, and liberty of the party or minor child and determines that the disclosure is in the interest of justice. The court is authorized to enter any orders in furtherance of the purposes of this section.

## RULE 103. PROCESS

All actions commenced by filing a complaint, petition or a motion for post-judgment relief with accompanying documents as required by this chapter shall be personally served upon the other party or parties in accordance with Rule 4, except as may be provided in these rules or by statute. In all actions under this chapter,

including motions for post-judgment relief, service may be made by registered or certified mail, with restricted delivery and return receipt requested as permitted under Rule 4(f)(2). This form of service may be made in or outside of the state, provided that the party being served is subject to the court's jurisdiction.

## RULE 104. PRELIMINARY INJUNCTION

(a) Preliminary Injunction. In all actions for (i) divorce; (ii) judicial separation; or (iii) spousal or child support following a divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, upon commencement of the action, shall issue a preliminary injunction on a form including requirements specified by statute.

(1) The preliminary injunction shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and, if the plaintiff is represented, state the name and address of the plaintiff's attorney. The plaintiff shall obtain the preliminary injunction form from the clerk and complete it before filing.

(2) The plaintiff shall serve the preliminary injunction, along with the summons and complaint or motion, upon the defendant in accordance with Rule 4 and Rule 103. The preliminary injunction is effective against the plaintiff upon the commencement of the action. It is effective against the defendant upon service of a copy of both the complaint or motion and the preliminary injunction order. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint or motion to be served.

(3) The preliminary injunction remains in effect until entry of a final judgment, until the action is dismissed or until the preliminary injunction is revoked or modified by the court. It is enforceable by all remedies made available by law, including contempt of court.

(b) Revocation or Modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification. A motion for revocation or modification of the preliminary injunction does not require a mediation before a hearing is held. On 7 days notice to the other party or on shorter notice as the court may order, the court shall proceed to hear and determine the motion as expeditiously as justice requires.

(c) Post-Judgment Proceedings. The injunction authorized in this section does not apply to post-judgment actions except as provided in subdivision (a)(iii) above.

## RULE 105. ANSWER; RESPONSE; COUNTERCLAIM

(a) Answer and Appearance. Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 20 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 20 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). When the court schedules a hearing on any matter before the 20 day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

If parental rights and responsibilities of a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an emancipation action or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.

A party who does not file an answer or response may enter an appearance before commencement of a hearing and be heard on issues of paternity or parentage, parental rights and responsibilities for children, child support, spousal support, counsel fees, and distribution of marital or nonmarital property.

(b) Counterclaims and Cross-claims. A grandparent visitation or emancipation action may not be asserted as a counterclaim or cross-claim and no counterclaim or cross-claim may be asserted in those actions. Any other Family Division action that could be brought pursuant to this chapter, including an action allowable by Rule 111, can be asserted as a counterclaim and cross-claim. Except for an action that could be filed as a Family Division action pursuant to this chapter, no counterclaim shall be permitted in any action pursuant to this chapter. Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

## RULE 106. DEFENSES

(a) Defenses to be Asserted. Every defense, in law or fact, shall be asserted in the responsive pleading except that the following defenses may be asserted by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of Process; and (5) insufficiency of Service of Process.

(b) Waiver or Preservation of Certain Defenses. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service is waived if omitted from a responsive pleading or not made by motion. Whenever the court finds that it lacks jurisdiction over the subject matter, the court shall dismiss the action.

## RULE 107. ORDERS PRIOR TO JUDGMENT

(a) Motions for orders prior to judgment. At any time prior to judgment in any action under this chapter in which the court has personal jurisdiction over the parties, the court may order the following:

(1) parental rights and responsibilities for any minor children, including health insurance and child support;

(2) appointment and payment of a guardian ad litem;

(3) participation in a parental education program;

(4) paternity testing;

(5) psychological or other evaluations;

(6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;

(7) possession of owned or rented real and personal property pending the final judgment;

(8) payment of debts and obligations;

(9) sale of any property of the parties, along with the disposition of the proceeds;

(10) interim spousal support;

(11) a job search;

(12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;

(13) prohibition of either party from imposing any restraint on the personal liberty of the other;

(14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and

(15) dissolution or modification of a preliminary injunction or an attachment or trustee process.

No orders prior to judgment may be entered without notice to the parties or upon motion. The motion may be accompanied by a draft order granting the relief requested.

In any action under this chapter in which the court lacks personal jurisdiction over the defendant, the court may at any time prior to judgment, and governed by the same notice provisions, enter any of the foregoing orders that it deems proper that do not involve the payment of, or the allocation of responsibility for the payment of, money.

(b) Expedited Hearings. A party, or a guardian ad litem, may request that a hearing on a motion be expedited. Such requests shall be in the form of a motion for expedited hearing and shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing. The request for an expedited hearing shall be considered in light of all relevant factors, including:

(1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;

(2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest of a child or the parental rights of a party;

(3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;

(4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;

(5) any unreasonable delay on the part of the moving party in filing the motion;

(6) any conduct on the part of either party impairing a fair and just resolution of the issues.

The moving party must determine and report to the court whether any other party objects to the requested relief and the motion for expedited hearing. The motion shall contain a notice stating the time for a response to the motion. Responses to a motion for expedited hearing shall be filed in writing within 7 days of the notice of the motion.

The court may rule on a motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable and good faith effort to notify the other parties or if delay would defeat the purposes of the motion. No ruling granting substantive relief shall be made without notice and opportunity to be heard.

## RULE 108. CHILD SUPPORT AFFIDAVITS AND WORKSHEETS, FINANCIAL STATEMENTS, AND REAL ESTATE CERTICATES

(a) Child Support Affidavits.

(1) In any proceeding under this chapter in which child support is an issue, the parties shall exchange and file child support affidavits. Except for actions initiated by the Department of Health and Human Services, the party initiating the action shall serve and file a completed child support affidavit with the complaint, petition or motion. The responding party shall file a completed child support

affidavit with the response or appearance but no later than the case management conference.

(2) If the Department of Health and Human Services seeks to initiate or modify a support order and is unable to secure the affidavit of a custodial parent who is in receipt of public assistance, the Department may submit an affidavit based upon its information and belief regarding the custodial parent's income.

(b) Child Support Worksheets. In any proceeding under this chapter in which child support is an issue, the court may, at any time, order the parties to file child support worksheets.

(c) Financial Statements. In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, the parties shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and nonmarital property. The financial statement shall be filed within 21 days of the Family Division Scheduling Order or before mediation, whichever is earlier.

(d) Miscellaneous requirements.

(1) Financial statements, child support affidavits and child support worksheets shall be filed on court approved forms that are published by the court.

(2) All child support affidavits and financial statements shall be signed by the party under oath.

(3) Any financial statement or child support affidavit filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available, as necessary, to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support.

(e) Real Estate Certificates. In every divorce action in which any party has an interest in real estate, the parties shall file with the court, at least 3 days before the hearing, the following information on the court approved form: the book and page numbers of an instrument describing the real estate; the applicable Registry of Deeds; and the town, county and state where the real estate is located.

(f) Sanctions.

(1) If a party fails to file any child support affidavit, child support worksheet, financial statement, or real estate certificate required by these rules, the court may make such orders in regard to such failure as are just, including imposition of sanctions, as appropriate, including but not limited to sanctions set forth in Rule 37(b)(2). However, a magistrate may not impose any sanctions or penalties based upon a determination of contempt under Rule 66.

(2) A child support order shall be entered notwithstanding a party's failure to file a child support affidavit. If a party fails to file a child support affidavit without good cause, the court may take any of the following actions:

A. Set that party's gross income in accordance with:

(1) The statutory minimum wage for a 40-hour work week;

(2) Maine Department of Labor statistics;

(3) An affidavit submitted by or testimony of the opposing party; or

(4) Information included in that party's most recent federal income tax return.

B. Enter an order requiring that party to release all requested information to the court. Failure to comply with the order may result in a finding of contempt punishable by a fine or jail sentence.

C. Award attorney fees.

## RULE 109. FAILURE TO APPEAR; SANCTIONS

If, after proper notice, a party fails to appear at a case management, pretrial or status conference, mediation or a hearing, without good cause, the court may take appropriate action, including but not limited to, issuing an interim, status conference or pretrial order, or a default or a default judgment as provided in Rule 117. If, after proper notice, the moving party fails to appear at a case management, pretrial or status conference, mediation or a hearing, without good cause, the moving party's complaint, motion or other pleading may be dismissed by the court

with or without prejudice. Costs may be awarded as allowed by these rules, as well as the cost of mediation, and reasonable attorney fees.

## RULE 110A. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING MINOR CHILDREN

(a) Family Law Magistrates. In all Family Division actions involving minor children, Family Law Magistrates shall have authority to: (1) hold case management conferences and other prehearing or pretrial conferences including judicial settlement conferences; (2) determine whether a party or counsel may attend a conference, mediation or hearing by telephone; (3) issue interim orders prior to judgment under Rule 107(a) and act on motions for expedited hearings under Rule 107(b); (4) issue final orders establishing or modifying child support; and (5) issue orders in child support enforcement actions. In an uncontested proceeding, magistrates may issue divorce judgments, paternity judgments, parentage judgments, judicial separation decrees, final orders establishing parental rights and responsibilities, and orders on post-judgment motions modifying any such original orders.

In contested proceedings, with the consent of the parties, magistrates may hear and decide interim orders establishing parental rights and responsibilities. In contested proceedings under a pilot project established by the Chief Justice of the Supreme Judicial Court, a magistrate may hear and decide final divorce judgments. When the parties are subject to a Protection from Abuse order, magistrates may amend the parental rights and responsibilities portion of the protection order to conform with the orders authorized above.

Nothing in these rules shall prohibit a judge from managing a case as provided in these rules.

(b) Case Management.

(1) *Case Management Conferences*. Whenever a complaint, petition or motion is filed in any proceeding involving minor children, except an emancipation action, the parties, and if represented their counsel, shall attend a case management conference with a magistrate or judge. At the initial conference and any subsequent conference the parties shall be prepared to address any issues in the case that may be raised by the court or the parties including, but not limited to: any issues in dispute; the need for an interim order or orders under Rule 107(a); a prehearing conference; an uncontested hearing date; and any other matters

pertinent to the case. Following the conference, the magistrate shall enter a case management order and other orders as appropriate.

In appropriate circumstances, a magistrate may dispense with a conference and set the matter promptly for hearing, may enter agreements on the record at the conference, may hold a hearing immediately following the conference, or may advise the parties that the matter will be referred to a judge.

(2) *Notice of Conference*. Except for motions to modify support filed pursuant to 19-A M.R.S. § 2009, the parties will be notified of the date and time of the case management conference within two weeks after the filing in court of the proof of service of the complaint, petition or motion. The conference will be held after the time for filing a response has passed. When a motion to modify support is filed pursuant to section 2009, the clerk will schedule a conference after receiving a response to the motion. If there is no response, a conference will not be scheduled, and the court will proceed in accordance with the provisions of section 2009.

(3) *Requests to Reschedule or Waive Conference or Mediation*.

(A) Rescheduling

(i) Continuance. Requests to continue a conference shall be in writing and may be granted for good cause shown pursuant to Rule 40(a). An agreement of the parties to continue, with an assurance by both parties that the children's needs are being met, constitutes good cause. Requests to continue mediation must proceed in accordance with Rule 92(b)(5)(G).

(ii) Deferral of Conference. Parties may request by letter, accompanied by the appropriate mediation fee, that the case management conference be deferred for up to 90 days and that they proceed directly to mediation pursuant to Rule 92(b). The letter must state that the parties or their counsel have conferred and that they agree that the children's needs are being met, there are no discovery disputes, there are no issues of domestic violence, financial statements will be filed with the court before mediation, and both parties join in the request. Both parties, or an attorney of record, must sign the letter. The appropriate mediation fee must be paid to the court when mediation is requested. The conference shall be scheduled by the clerk for no later than 90 days after the deferral.

(B) Waiver of Conference. Instead of attending an initial case management conference following the filing of a complaint or petition, the parties may file a certificate stating that they have reached a temporary agreement on all issues relating to the children. The certificate must be signed by both parties or their attorneys, indicate what issues, if any, remain unresolved in the case, and include a date for a status conference, mediation, payment of mediation fee, or a final hearing not to exceed 90 days from the date of the certificate. The parties are responsible for obtaining dates from the court. With the certificate, the parties must submit for the magistrate's review child support affidavits, worksheets, a written agreement on parental rights and responsibilities that addresses the children's residence, support or maintenance, and parent-child contact, and if an interim order is requested, a proposed order incorporating the terms of the agreement. The magistrate may require the parties to attend a case management conference if the agreement appears inequitable on its face, if the agreement provides for a deviation from the child support guidelines, if there has been a history of domestic abuse, or for any other reason. Upon receipt of a written statement by either party that the agreement is not being followed, a case management conference will be scheduled.

(4) *Interim Relief.*

(A) Interim Orders Without Hearing. At any stage in the proceedings, a magistrate may enter interim orders with the consent of the parties or when a party is in default. Whether or not the parties agree, a magistrate may enter a Family Division Scheduling Order. At their initial court appearance, the parties shall be advised of their right to have a judge determine interim parental rights and responsibilities. To exercise this right, a party must file a written request with the court clerk either before or at the time of their initial court appearance. In the absence of such a written request, the parties' consent will be presumed, and a magistrate may determine interim parental rights and responsibilities.

(B) Mediation. When the parties cannot reach an interim agreement on all issues or if the court defers a conference at the request of the parties, mediation shall be promptly scheduled as provided in Rule 92(b). The magistrate may waive the required mediation for good cause shown. An agreement reached through mediation shall be reviewed by the court. If approved, it may be entered as either an interim or final order.

(C) Interim Orders After Hearing. If, after mediation, the parties have not reached an interim agreement, the magistrate may conduct a hearing on the

contested issues and enter an interim order. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

(5) *Proceedings After Entry of Interim Order*.

(A) Uncontested Proceedings. If there are no issues in dispute following the entry of an interim order, the case shall be scheduled for an uncontested final hearing before the court.

(B) Contested Proceedings. When issues remain in dispute and mediation has not been held on these issues, the case shall be referred to mediation as provided in Rule 92(b).

(i) If the issues are resolved by mediation, the case shall be scheduled for a final, uncontested hearing before the court.

(ii) When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing.

(6) *Post-Judgment Motions*.

(A) Motions to Modify.

(i) The case management process stated in these rules shall be used for post-judgment motions to modify.

(ii) Uncontested Motions. Instead of attending a case management conference on a post-judgment motion, the parties may file a certificate stating that a hearing is not necessary because the motion is unopposed or the parties have reached an agreement. The certificate must be signed by both parties under oath, and be accompanied by a stipulated order. When the proceeding is a motion to modify child support and the responding party does not request a hearing, the conference may be waived and the magistrate may enter an order pursuant to 19-A M.R.S. § 2009(6).

(B) Motions to Enforce. A motion to enforce a judgment or order shall be addressed in a timely fashion and shall not be included in the case management process. The motion shall be referred to a judge who may refer the motion to mediation, or may refer the action for prompt scheduling of a hearing before a judicial officer. Relief on a motion to enforce may include amendment of a judgment or order if such is necessary to achieve the purposes of the judgment or order.

(C) Contempt. Contempt proceedings shall be referred to a judge.

(7) *Effect of Case Management and Interim Orders*. A magistrate's case management and interim orders are effective when signed and remain effective until amended or until a final order is entered. A magistrate's order is enforceable as an order of the court and is entitled to full faith and credit. An interim order does not constitute the law of the case, and the issues may be decided de novo at the final hearing.

## RULE 110B. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING NO MINOR CHILDREN

The procedures in this rule apply to all actions under this chapter in which there are no minor children, except post-judgment motions.

(a) Scheduling Order. Upon the filing of an answer, response, or entry of appearance, the court shall issue a Scheduling Order which sets deadlines for: filing of financial statements and real estate certificates, scheduling and completion of mediation as provided in Rule 92(b), completion of discovery, date for exchanging witness and exhibit lists, scheduling of a pre-trial conference if necessary, filing of motions, and placement of the action on the trial list. Before the issuance of the Scheduling Order, parties may file an agreed-upon Scheduling Order covering all the deadlines outlined above. The Scheduling Order may be modified upon motion and for good cause shown. An agreement by the parties to amend the Scheduling Order may constitute good cause shown. Sanctions may be imposed for non-compliance with the order.

(b) Failure to Respond. If no answer, response, or entry of appearance is filed, the clerk shall set the case for an uncontested hearing.

(c) Prehearing Conference. Upon the court's own motion or at the request of a party, the court may hold prehearing conferences, including a judicial settlement

conference, as provided in Rule 16(b) or Rule 16A and to address prehearing and hearing issues including case management. The court shall exercise its discretion in deciding whether to permit a party to participate in conferences, mediation or hearings by telephone.

(d) Post-Judgment Motions. The pretrial procedure for post-judgment motions in which there are no minor children shall be left to the discretion of the court upon review of the filings.

## RULE 111. JOINDER, CONSOLIDATION AND INTERVENTION

(a) Joinder.

(1) *Joinder of Claims and Remedies*. Grandparent visitation and emancipation actions shall not be joined with other Family Division actions. Any other claim, counterclaim or request for relief that could be brought as a separate Family Division action may be joined to an action under these rules.

(2) *Joinder of Persons or Entities*. The only persons who may be joined as parties to an action under these rules are persons or entities specifically authorized to file or participate in a Family Division action by Title 19-A of the Maine Revised Statutes. However, persons who file emancipation or grandparents visitation actions may not be joined.

(b) Consolidation. Rule 42 governs consolidation in Family Division matters.

(c) Intervention. A person may petition to intervene in a Family Division action only when that intervention is specifically authorized by statute, or when the individual or entity would be authorized to file a complaint or post-judgment motion involving one or more of the same parties and issues that are being addressed in the Family Division action in which the person is seeking to intervene. Where intervention is authorized, practice regarding intervention is governed by Rule 24.

## RULE 112. DISCOVERY

(a) Discovery Limitations. In any proceeding under this chapter, a party may obtain discovery on issues of spousal and child support, counsel and guardian ad litem fees, and disposition of property and debt as in any other civil actions.

However, when financial statements are required under Rule 108(c), discovery may be initiated only after the parties have filed and exchanged the financial statements. If the exchange does not occur, the party who has filed a financial statement may serve discovery after the time period has expired as provided in Rule 108(c). On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

(b) Financial Statements. In any proceeding under this chapter upon motion of a party or its own motion, the court may order the parties to file and exchange financial statements or child support affidavits when the filing of these documents is not required under Rule 108. The court may also order the supplementation of financial statements or child support affidavits.

(c) Discovery Procedure. Where discovery occurs, discovery practice shall be governed by Rules 26 through 37. If a party fails to comply with discovery, compliance with discovery may be enforced by a judge or magistrate. A magistrate may impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanctions or penalties based upon a determination of contempt under Rule 66.

(d) Updated Statements. The parties shall update child support affidavits and financial statements 7 days before trial.

## RULE 113. TIME FOR FINAL HEARING

An action for divorce or annulment shall not be in order for final hearing until 60 days or more after service of the summons and complaint; nor shall it be in order for hearing until there is on file with the court a statement signed by the plaintiff, which may be contained in the complaint, stating whether any divorce or annulment actions have previously been commenced between the parties, and if so the designation of the court or courts involved and the disposition made of any such actions. Except as the court may otherwise direct, no case involving real estate shall be ready for final hearing until the real estate certificates have been completed as required by Rule 108.

If the responding party has not entered an appearance, the party initiating the action shall file a Federal Affidavit stating under oath that the responding party is not serving in the military or an affidavit signed by the responding party waiving rights conferred by the Service Members Civil Relief Act.

Other matters may be scheduled for trial at such time as pretrial proceedings are complete and the matter is in order for hearing on the merits. All actions under this chapter shall be transferred to the trial list by order of the court.

## RULE 114. TRIAL

(a) Trial Process. A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the child support guidelines. The Maine Rules of Evidence shall govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

(b) Final Orders by Family Law Magistrates.

(1) *Child Support*. A magistrate may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

(2) *Other Matters*. A magistrate may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A magistrate may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a magistrate may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

## RULE 115. NO JUDGMENT WITHOUT HEARING; JUDGMENTS TO BE FINAL

(a) Hearing.

Unless otherwise provided by these rules, no judgment, other than a dismissal for want of prosecution, shall be entered in an original action under these rules except after hearing, which may be ex parte if a party does not appear. With the permission of the court, a party may appear at a hearing by telephone or by video-conference.

(b) Finality. Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, judicial separation, disposition of property, or other disposition, award, or division of property incident to a divorce, annulment, judicial separation or any order relating to paternity, parentage, parental rights and responsibilities including child support, emancipation, and visitation rights of grandparents, other than a temporary or interim order under these rules, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

## RULE 116. DISMISSAL OF ACTIONS

Rule 41 shall govern practice under this chapter regarding dismissal of actions, except that all dismissals shall be without prejudice unless the court specifically indicates that a dismissal is with prejudice and precludes further litigation of the same issue. Any new action addressing issues similar to a dismissed action shall be subject to appropriate counterclaims and defenses.

## RULE 117. DEFAULT

Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard before entry of judgment. Notice of hearing is not required prior to entry of a default judgment where the court finds that the party, although properly served with the complaint, petition or motion for post-judgment relief, has not entered an appearance and/or otherwise participated in proceedings before the judgment.

## RULE 118. FINAL ORDERS OF FAMILY LAW MAGISTRATES; JUDICIAL REVIEW

(a) Objection and Review. Any party who wishes to appeal a Family Law Magistrate's final judgment or order shall file an objection in the District Court within 21 days of the entry of the magistrate's final judgment or order. If no objection is filed, the parties are deemed to have waived their right to object and to appeal, and the magistrate's final judgment or order shall become the judgment of the court and have the same effect as any final judgment signed by a District Court judge.

(1) The objection must specifically state the grounds alleged for rejecting or modifying the judgment or order. If a party fails to comply with these requirements, the objection may be dismissed with prejudice. An objection shall not be dismissed solely because it is erroneously captioned as a "motion," "appeal," "notice of appeal" or some other form of pleading.

(2) When an objection is filed, a judge shall review the record established before the magistrate with or without a hearing and may adopt, modify or reject the order, set the matter for further hearing before a judge or magistrate or recommit the matter to the magistrate with instructions.

(3) A magistrate's final order addressing parental rights and responsibilities, residency, and support of minor children or the separate support or personal liberty of a person is effective when signed and remains in effect until modified or rejected by a judge.

(4) Every written final order of a magistrate shall state the parties' right to object to the magistrate's final order and the consequences if the parties fail to object.

(b) Appeals. An appeal from a judgment entered after objection to a final judgment or order of a magistrate shall be taken in accordance with the Maine Rules of Appellate Procedure. No appeal may be taken from a final judgment or order of a magistrate as to which no timely objection was filed pursuant to subdivision (a).

(c) Waiver of Rights. The parties may waive their right to object and request immediate confirmation of a magistrate's final order. They may also waive their rights to appeal.

## RULE 119. REFEREES

The court may appoint a referee in any case where the parties agree that the case may be heard by a referee, pursuant to Rule 53.

## RULE 120. POST-JUDGMENT RELIEF

(a) Except as otherwise provided in Title 19-A, any proceedings for modification or enforcement of a final judgment in an action under this chapter

shall be on a motion for post-judgment relief. The motion shall be served in accordance with Rule 103. A motion made in response to a motion filed by a party represented by an attorney may be served upon the attorney in accordance with Rule 5.

A motion, any response, and any opposing motion or memorandum shall be accompanied, as appropriate, by the child support affidavits if required by Rule 108.

A motion for contempt may also be brought pursuant to Rule 66. After a hearing on a motion for contempt and a finding of contempt, in addition to other relief, a court may determine that an order amending a judgment or order is necessary to achieve the purposes of the judgment or order that is the subject of the motion for contempt.

Post-judgment motions filed in an action under this chapter must be accompanied by a properly completed Summary Sheet, which is available from the clerk.

(b) The court shall hold a hearing on a motion for post-judgment relief, unless the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary.

(c) Upon motion of a party made within 5 days after notice of a decision under these rules, or upon the court's own motion, the justice or judge who has entered an order on a motion for post-judgment relief shall make findings of fact and conclusions of law in accordance with Rule 52.

## RULE 121. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Unless otherwise ordered by the court, an interlocutory or final judgment in an order addressing parental rights and responsibilities, residency and support of minor children or the separate support or personal liberty of a person shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

Rule 62 shall govern the practice for a stay of a judgment or enforcement or a judgment.

## RULE 122. TRANSFER FROM SUPERIOR COURT TO DISTRICT COURT

Any Family Division action pending in the Superior Court may be transferred to the District Court. Transfer shall be accomplished by filing a notice of transfer agreed to by the parties or their counsel and by paying to the clerk of the Superior Court any required fees. No transfer may be requested during a hearing or while the court has under advisement the merits of the action or any motion after hearing. The action may be transferred to a division of the District Court, located within the county in which either party resided at the commencement of the action. The notice must designate the receiving District Court. After a judgment has become final, the action may be transferred to any division of the District Court. The clerk shall file a copy of the record and all original papers in the action in the District Court in that division. Thereafter the action shall be prosecuted as if all prior proceedings in the action had taken place in the District Court.

## RULE 123. APPEALS TO THE LAW COURT

Appeals to the Law Court from orders and judgments entered in accordance with this chapter, in which there is a right of appeal to the Law Court, shall be governed by the Maine Rules of Appellate Procedure.

Parties may waive their right to appeal on a court approved form.

## RULE 124. REMOVAL TO SUPERIOR COURT

When the Maine Constitution or the United States Constitution provides a right to a trial by jury in any action or on any issue in an action brought pursuant to this chapter, that action or issue may be removed to the Superior Court for jury trial. When such a removal is authorized, the removal shall be governed by Rule 76C, provided that once the constitutional action or issue is resolved by verdict of the jury, the matter shall be remanded to the District Court for such further proceedings as are authorized or required by this chapter.

## RULE 125. EFFECTIVE DATE

The rules in Chapter XIII are effective January 1, 2009. They shall govern all proceedings in Family Division actions brought on and after January 1, 2009 and all further proceedings in actions then pending.

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