

STATE OF MAINE
SUPREME JUDICIAL COURT
ADMINISTRATIVE ORDER JB-22-03 (A. 3-22)

ORDER REGARDING REFEREES

Effective: March 21, 2022

This Order amends JB-22-03, promulgated on February 9, 2022, to take effect on February 28, 2022.

The COVID-19 pandemic has placed an unprecedented strain on judicial resources. In an effort to expedite resolution of pending matters and provide timely access to justice in all case types, the Supreme Judicial Court implements a court-paid referee process in non-jury civil actions and family matters until further Order of the Court.

I. SCOPE

This Order applies only to referees paid by the court to conduct settlement conferences or resolve by hearing *non-jury* civil actions and family matters.¹ Rule 53 of the Maine Rules of Civil Procedure shall not apply except to the extent specifically incorporated herein.

This Order does not preclude parties from privately retaining a referee, in which case M.R. Civ. P. 53 shall apply.

II. COMPENSATION

The court may appoint a referee in a non-jury civil action or a family matter at the court's expense regardless of the parties' indigency. Only one court-paid referee shall be appointed per case.

¹ This Order does not apply to criminal, juvenile, protection from abuse, protection from harassment, child protection, adoption of minors, guardianship of minors, and name change of minor cases.

III. APPOINTMENT OF REFEREE FOR SETTLEMENT CONFERENCE

- A. Case Management Conference.** Upon appointment to conduct a settlement conference, the court-paid referee shall schedule and hold a case management conference with the parties. After such conference, the referee shall issue a case management conference order.
- B. Format.** The format of the case management conference and settlement conference before a court-paid referee shall be remote via Zoom, unless the parties and the referee agree to hold the settlement conference in person at a location that is not a court facility. Case management conferences and settlement conferences need not be recorded.
- C. Uncontested Hearings.** If the parties reach a complete or partial agreement, the court-paid referee shall hold an uncontested hearing to place the parties' agreement on the record. The uncontested hearing shall be held remotely via Zoom, and the court will arrange and pay for the recording of the proceeding. Recordings of uncontested hearings held by Zoom shall be exempt from the requirements of section II(B) of Administrative Order JB-12-1, *Recording of Trial Court Proceedings*, but shall have separate audio tracks for each participant.
- D. Report.** The court-paid referee shall file a report with the court and attach a proposed order of the parties' agreement.² If there are any issues that remain in dispute, the referee shall include a list of those issues in the report. The report and attached proposed order, if any, shall be filed by email with the court with copy to the parties.

IV. APPOINTMENT OF REFEREE FOR HEARING

- A. Appointment of Court-Paid Referee by Agreement.** The court may appoint a court-paid referee to hear and determine all contested issues in cases where all parties agree to the appointment.

² Proposed orders filed by a referee are not subject to Administrative Order JB-22-01, *Order Regarding Proposed Orders by Email*.

1. *Entry of Judgment When the Appointment of Court-Paid Referee is by Agreement.* Upon receipt of the referee's report, the court shall enter judgment on the referee's report.
2. *Waiver of Right to Object.* Agreement to the appointment of a court-paid referee to conduct a final hearing constitutes a waiver of the right to object to the acceptance of the referee's report but does not affect the parties' right to appeal the final judgment to the Supreme Judicial Court.

B. Appointment of Court-Paid Referee without Agreement. If any party does not agree to the appointment of a referee, the court may still appoint a court-paid referee to hear and determine all contested issues if exceptional conditions warrant the appointment. For purposes of this order, exceptional conditions include the pendency of the COVID-19 pandemic and the resulting strain on judicial resources.

1. *Notice to Preserve Right to Object.*
 - a. *Presumption.* When the appointment of a court-paid referee is made without agreement of the parties, there is nonetheless a presumption that the parties have waived their right to object to the acceptance of the referee's report.
 - b. *Rebutting the Presumption.* This presumption is automatically rebutted for all parties upon filing by any party of a notice that the party wants to preserve the right to object to acceptance of the referee's report. The notice to preserve the right to object must be filed within 14 days after the entry of the order appointing court-paid referee. The filing party must send a copy of the notice to all other parties.

2. *Entry of Judgment When the Appointment of Court-Paid Referee is Without Agreement.*

- a. *Objections Filed.* When the right to object to the court-paid referee's report has been preserved, any party who wishes to object to the referee's report shall file with the court and serve upon the other parties written objections within 14 days after the referee's report is docketed. The parties shall file the written objections with the court in paper form, except that in courts that have implemented electronic filing, the method of filing shall be in accordance with the Maine Rules of Electronic Court Systems. The procedure shall thereafter be as set forth in M.R. Civ. P. 53(e)(2).
- b. *No Objections Filed.* If no objections have been timely filed, the court shall enter judgment on the court-paid referee's report

C. **Order Appointing Court-Paid Referee.** The order appointing a court-paid referee will indicate whether the appointment is by agreement.

D. **Case Management Conference.** Upon appointment to conduct a hearing, the court-paid referee shall schedule and hold a case management conference with the parties. After such conference, the referee shall issue a case management conference order.

E. **Format.** The format of the case management conference and hearing before a court-paid referee shall be remote via Zoom, unless the parties and the referee agree to hold the hearing in person at a location that is not a court facility.

F. **Recording and Transcript.** All hearings before a court-paid referee must be recorded. Case management conferences need not be recorded.

- 1. *Recording of Remote Hearing.* If the hearing is held remotely via Zoom, the court will arrange and pay for the recording of

the proceeding. Recordings of hearings held by Zoom shall be exempt from the requirements of section II(B) of Administrative Order JB-12-1, *Recording of Trial Court Proceedings*, but shall have separate audio tracks for each participant.

2. *Recording of In-Person Hearing.* If the parties and court-paid referee agree to hold the hearing in person, then the parties shall arrange and pay for private court reporting services to take the record of the hearing.
3. *Transcript.* If a party objects to the court-paid referee's report, or if a party files an appeal from the judgment adopting that report, a transcript of the recording of the hearing shall be created. For hearings held remotely, the court shall arrange and pay for the creation of a transcript. For hearings held in person, the parties shall arrange and pay for the creation of a transcript by the private court reporting service that took the record of the hearing. The transcript produced by the private court reporting service shall be the official record of that proceeding.

G. Witnesses. The parties may procure the attendance of witnesses before the court-paid referee by the issuance and service of subpoenas as provided in Rule 45 of the Maine Rules of Civil Procedure. 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 of the Maine Rules of Civil Procedure.

H. Rules of Evidence. The Maine Rules of Evidence shall apply in hearings before a referee.

I. Report.

1. *Contents and Filing.* The court-paid referee shall prepare a report deciding the matter. The report shall contain sufficient findings of fact and conclusions of law to permit

appellate review. If child support is an issue decided by the referee, the referee shall attach to the report a proposed child support order and child support worksheet. The referee shall file with the court (1) the report, (2) the exhibits, and (3) the record of the proceeding if the proceeding was held in person. The report shall be filed by email with the court. The referee shall email a copy of the report to the parties upon filing with the court. The referee shall also file any exhibits by email with the report, or by mail or delivering copies of the exhibits to the appropriate court.

2. *Draft Report.* Before filing a report with the court, the court-paid referee may submit a draft report to the parties for the purpose of receiving their suggestions.
3. *Amendment of Final Report.* Not later than 14 days after the report from the court-paid referee is filed by email with the court, a party may file with the court a motion requesting amended or additional findings, with copy to all parties and the referee. If the motion complies with M.R. Civ. P. 52(b), the referee may consider the motion and may either grant or deny the motion. If the referee grants the motion, the referee shall file by email with the court a supplemental report containing amended or additional findings or conclusions. If the referee denies the motion because it does not comply with M.R. Civ. P. 52(b) or denies the motion after consideration, the referee shall file by email with the court the notice of denial. The referee shall email a copy of the supplemental report or notice of denial to the parties upon filing with the court.
 - a. If the order appointing court-paid referee was by agreement under subsection III(A), then the court shall enter judgment on the referee's supplemental report upon receipt of the report, or shall enter judgment on the referee's original report upon receipt of the notice of denial of the motion.

- b. If the order appointing court-paid referee was not by agreement and any party filed a notice to preserve the right to object under subsection III(B)(1), then any party may serve and file written objections to the referee’s original or supplemental report as provided in subsection III(B)(2)(a). The party shall serve and file the written objections within 14 days after the referee’s supplemental report or notice of denial is filed by email with the court.

V. APPEALS

The parties may take an appeal from the court’s judgment in accordance with the Maine Rules of Appellate Procedure.

Promulgation Date: March 7, 2022

For the Court:

_____/s/_____
Valerie Stanfill
Chief Justice, Supreme Judicial Court

AO JB-22-03 (A. 3-22) dated March 7, 2022 and effective March 21, 2022
Signed by: Valerie Stanfill, Chief Justice, Maine Supreme Judicial Court
Issued to establish a new referee process with referees paid by the court to conduct settlement conferences or resolve by hearing non-jury civil actions and family matters.

Historical Derivation of JB-22-03

AO JB-22-03 dated February 9, 2022, and effective February 28, 2022
Signed by: Valerie Stanfill, Chief Justice, Maine Supreme Judicial Court
Issued to provide that the Supreme Judicial Court will implement a new referee process in non-jury civil actions and family matters, with the process and effective date to be established through subsequent amendments to the Administrative Order.