

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.

Mediation pursuant to Rule 92(b) may be waived when the parties agree to proceed with and pay for private mediation in place of mediation pursuant to Rule 92. 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.

Advisory Committee's Note

July 1, 2009

This amendment is added to Rule 110A(b)(4)(B) to recognize past and current practice that parties to domestic relations actions requiring mediation may, by agreement, arrange and pay for private mediation in place of mediation provided pursuant to Rule 92.

Advisory Notes
June 2008

The rule recognizes that pre-hearing procedure applies to two groups of Family Division actions—those with minor children and those without. Cases involving minor children should receive priority treatment. Rule 110A applies to actions involving minor children. Rule 110B applies to actions that do not involve minor children.

Rule 110A incorporates substantial portions of the current Family Division rules relating to calendaring and scheduling of cases and conduct of case management conferences.

Subdivision (a) is based on FAM DIV I.C. making specific reference to the authority and limitations on authority of Family Law Magistrates. It also corresponds with the accepted practice that emancipation actions have not been placed in the case management system because of their summary nature. It clarifies that magistrates may act in uncontested matters on post-judgment motions.

Subdivision (b)(1) is based on FAM DIV III.A.1. It relates to scheduling of conferences before Family Law Magistrates. FAM DIV III.A.1 states a list of issues that may be raised by the court or the parties and be considered at the conference. Subdivision(b)(1) does not include the list. The list of issues that may be addressed and actions that may be considered is stated in Rule 107(a) relating to interim orders and cross referenced in this draft to avoid duplication and confusion that might result from any different wording.

Child support affidavits are based on FAM DIV III.A.2 and are addressed by Rule 108.

Subsection (b)(2) is based on FAM DIV III.A.3.

Subsection (b)(3)(A)(i) is based on FAM DIV III.A.4 and is amended to include requests to continue mediation.

Subsection (b)(3)(A)(ii) relating to deferral of a conference is a new provision and permits the parties to attend mediation before a conference with the court. The amendment also requires the parties to pay the mediation fee if mediation is requested.

Subsection (b)(3)(B) is based on FAM DIV III.A.5 and requires the parties to obtain dates for mediation and payment of the mediation fee.

Subsection (b)(4) is based on FAM DIV III.B.

Subsection (b)(5) is based on FAM DIV III.C.

Subsection (b)(6) is based on FAM DIV III.D. and Rule 80(k)(2). The new rule provides that Motions to Enforce shall be eliminated from the case management system to avoid delay in enforcing existing orders. This is consistent with the recommendation of the Family Division Task Force to reduce the number of conferences in family matters.

FAM DIV III.E & F. are addressed in Rule 114.

Subsection (b)(7) is based on FAM DIV III.G(1). FAM DIV III.G.2-4 is addressed in Rule 118.