

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

RULE 76C. REMOVAL TO THE 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 Court. 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.

**Advisory Committee Note
December 2007**

The amendment clarifies that the notice of removal should be filed at the time of entry of appearance if no written answer is required in the action. See *City of Biddeford v. Holland*, 2005 ME 121.

**Advisory Committee's Notes
January 1, 2006**

This amendment eliminates the removal fee and the forwarding fee from the rule. The amendment also eliminates a provision relating to support and custody determinations that is unnecessary, as such matters may no longer be removed to the Superior Court.

**Advisory Committee's Notes
July 1, 2001**

[Rule 76C(a) Amendment]

Rule 54B was abrogated in 1999. Fees for specific actions such as removal or the jury fee are now set by Administrative Order authorized by Rule 54A. As occurs at most points in the Civil Rules, the fee is referenced without reference to Rule 54A. The particular fee should be determined by examining the Administrative Order regarding fees. [That Administrative Order follows Rule 54A in this document]

**Advisory Committee's Note
May 16, 2001**

For cases subject to the court-connected ADR requirements of Rule 16B and which are removed from District Court, payment of the jury fee is deferred until 150 days after entry of the scheduling order required by M.R. Civ. P. 16(a). This rule amendment recognizes that payment of the jury fee shall be deferred in those ADR cases. For all other cases, the jury fee is due promptly upon filing the removal notice. For cases which are not exempt from the ADR process, but are later exempted by a court order, the jury fee must be paid promptly after the exemption order is entered.

Advisory Committee's Note
January 1, 2001

P.L. 1999, Chapter 731, §§ ZZZ-2 *et seq.* unified the Superior Court and the District Court civil jurisdiction, with certain stated exceptions. Nonetheless, the Superior Court will continue to conduct jury trials. Consequently, a defendant or another party joined to a civil action in the District Court may remove that action to the Superior Court for jury trial in accordance with Rule 76C. Removal for jury trial is now the only occasion on which a removal under Rule 76C is appropriate. Amended subdivision (a) makes clear that a party seeking removal for jury trial must pay the jury fee at the time of removal. Consequently, under present practice, the payment of the jury fee will occur earlier upon removal than if the case had been commenced in the Superior Court. Former subdivision (d) pertaining to removal of actions involving title to real estate, has been abrogated since this ground for removal no longer exists with the jurisdictional changes enacted by the unification amendments.

Subdivisions (a) and (c) are also amended to clarify the requirements for filing a notice of removal. Former subdivision (a) provided that the notice shall be filed within the time for “filing” the answer or reply. This requirement made the time for filing difficult to determine, since Rule 12(a) requires the answer be “served” and Rule 5(d) requires that a served paper may be filed “within a reasonable time thereafter.” The amendment to subdivision (a) makes clear that the notice shall be filed within the time for serving the answer or reply, which means that although service or reply may be complete upon mailing, the notice of removal must be *filed* with the court in order to be timely. Subdivision (c) has been amended to make clear that once the record is received in the Superior Court, all filings thereafter shall be made in the Superior Court.

A further amendment to subdivision (c) prescribes the procedure where a case is removed to the Superior Court, but the opposing party contends that no jury trial right exists for the removed action. The procedure under amended subdivision (c) is to file a motion in the Superior Court to remand the action to the District Court. The motion will be filed, briefed and disposed of under Rule 7. If the Superior Court should find an improvident removal (i.e., a removal where no proper grounds exist), the action shall be remanded to the District Court and the removing party receives no refund of fees previously paid.

Rule 76C is completely revised to restate and amplify its provisions in clearer form.

Rule 76C(a) is intended to make clear that the removal rule applies to all civil actions and proceedings in the District Court, including civil violation proceedings under Rule 80K, except where express contrary provision is made. Thus, under Rule 80D(i), removal is permitted in forcible entry and detainer actions only in accordance with the statutory provision for entry of the action in the Superior Court by the plaintiff when the defendant pleads title. Under Rule 80F(g), removal of traffic infraction proceedings is prohibited entirely. Under Rule 80H(g), removal is permitted in a civil violation proceeding only where there is a right to trial by jury. As under the prior rule, removal is available only to a defendant or a party in similar procedural posture and is effected by filing notice of removal and the requisite fee and cost of transmission of the record within the time for filing the appropriate responsive pleading. Prior provisions permitting joint or separate removal by joint defendants are carried forward.

Rule 76C(b) makes clear that the record which the clerk is to transmit is similar in form to the record on appeal provided for in Rule 76F(a). The subdivision carries forward existing provisions concerning District Court action on pending motions and the effect of orders of the District Court entered prior to removal. As under the former Rule, failure on the part of the removing party to comply with the provisions of the Rule concerning filing and service of the notice and payment of the removal fee and cost of the record has the effect of voiding the removal.

Rule 76C(c) makes clear that the transfer of jurisdiction to the Superior Court takes effect when the record is received in that court. The subdivision adapts language of Rule 76F(a) requiring the Superior Court clerk to give notice of the completion of removal to other parties. As under the prior rule, upon the completion of removal, pleading and other procedural steps are to be carried forward as though the action had been brought in the Superior Court in the first instance.

Rule 76C(d) carries forward provisions of the prior rule permitting removal by either party if title to real estate is put in issue by the pleading. An exception is made for the statutory provision concerning forcible entry and detainer discussed in connection with subdivision (a) above.

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.

Advisory Notes July 2003

This amendment, adding an initial paragraph to M.R. Civ. P. 76D, is to address continuing confusion which court clerk's offices are facing with unrepresented individuals seeking to file all appeals under Rule 76D because it is the only explicit appeal provision appearing in the Civil Rules. The cross-reference to the Maine Rules of Appellate Procedure may help in clarifying this matter.

Advisory Committee's Notes

January 1, 2001

P.L. 1999, Chapter 731, §§ ZZZ-2 *et seq.* unified the Superior Court and the District Court civil jurisdiction, with certain stated exceptions. 4 M.R.S.A. § 57 was amended to permit direct appeal to the Law Court from the District Court except in certain specified actions. Thus, a new introductory phrase “[w]henever a judgment of the District Court is by law reviewable by the Superior Court” is added to the first sentence of Rule 76D to make clear that the appeal from a judgment of the District Court to the Superior Court is available only in those actions by law reviewable in the Superior Court. All other District Court judgments are reviewable by the Law Court under amended 4 M.R.S.A. § 57.

Advisory Committee’s Notes June 2, 1997

Rule 76D is amended to clarify that an order of remand from the Superior Court to the District Court is not a final judgment from which an appeal lies, absent special circumstances. The amendment is not intended to change the law governing final judgments, moot issues or the preservation of issues for appeal. The amendment simply makes clear that in the ordinary case, an order of remand is not appealable and, to the extent that issues have been properly preserved throughout the course of the proceedings and are ripe for appeal when the remanded issues have been decided, the appeal from the final judgment preserves issues raised prior to the remand.

Advisory Committee’s Notes 1993

Rule 76D is amended by adding language to make clear that an appeal from the District Court to the Superior Court is entered by the Superior Court clerk only after payment of the fees by the appellant in the District Court and transmission of the record to the Superior Court by the District Court clerk.