

## **RULE 104. PRELIMINARY INJUNCTION**

**(a) Preliminary Injunction.** In all actions for divorce, judicial separation, or 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.

## **Advisory Note - July 2016**

The omission of list numbers in the first sentence of Rule 104(a) reflects an attempt to improve readability.

## **Advisory Notes June 2008**

Rule 104 governs statutory preliminary injunctions. Once an action for divorce, judicial separation, or separate support is initiated, 19-A M.R.S. § 852 and 19-A M.R.S. § 903 require that a preliminary injunction issue and specify the terms of the preliminary injunction order. The preliminary injunction procedure applies to original actions identified in the rule. It does not apply to actions initiated by a post-judgment motion, except for a narrow category of post-judgment motions for support where a divorce court lacked jurisdiction over an absent spouse. The purpose of the preliminary injunction is to protect property of either or both parties from dissipation and subject the property to control of the court during the divorce or other adjudicative process. The form and language of a preliminary injunction should track the statutes upon which the preliminary injunction is based. The rule also clarifies that mediation is not required prior to a hearing on a modification or a revocation of a preliminary injunction.