

RULE 126. TRANSFERS FROM PROBATE COURT WHEN A FAMILY MATTER OR A CHILD PROTECTION MATTER IS PENDING IN THE DISTRICT COURT

(a) Transfer of Any Pending Matters in Probate Court. The District Court presiding over any family matter or child protection case involving a minor child shall, at the first conference, determine whether there are any proceedings involving custody or other parental rights, including adoption, concerning that child currently filed or pending before a Probate Court. A case is “pending” in a court when it has been filed in the court and is being litigated in the court, and/or is awaiting a judgment or order from the court.

(1) If the District Court learns of any such proceedings, it shall, within 7 days, conduct a telephone conference with the Probate Court to determine the appropriate action to facilitate a transfer of the matter from the Probate Court. In making that determination, the District Court shall be guided by the requirement that the District Court serve as the home court for all cases involving a minor child’s custody or parental rights, whether filed in the Probate Court or District Court, while at the same time ensuring that parties are not required to re-litigate a matter that has already been heard by the Probate Court. Before determining the most appropriate action, the District Court shall consider all relevant factors, including:

- (A) The type of case filed in each court,
- (B) The identity of the parties,
- (C) The extent of the Probate Court litigation,
- (D) The extent of the litigation or anticipated litigation in the District Court,
- (E) The length of time the proceeding has been pending in the Probate Court,
- (F) The date and nature of any already-scheduled proceedings,
- (G) Whether the Probate Court has already conducted any interim or final hearings, and
- (H) Whether there are any impediments to the immediate transfer.

(2) The District Court shall make an audio record of the conference conducted with the Probate Court.

(3) If the District Court is unable to hold a conference with the Probate Court within the time specified in Rule 126(a)(1), the District Court shall, using the factors listed in that section, determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(4) As soon thereafter as possible, and in any case no more than 28 days after the conference with the Probate Court or 35 days after the District Court learns of the case pending or filed in the Probate Court, whichever is sooner, the District Court shall issue an order that immediately transfers the Probate Court proceeding to the District Court where there is a pending family matter or child protection case, unless the court determines that immediate transfer would result in undue delay or waste of judicial resources. If the District Court does not order immediate transfer, it shall issue an order that transfers the proceeding from Probate Court to District Court:

(A) As soon as a specified event in the Probate Court has occurred,

(B) As soon as the Probate Court has issued an order ruling on a matter it has under advisement, or

(C) On a date certain.

The District Court shall provide copies of the transfer order to all parties and to the Probate Court.

(b) Procedure for Transfer. Within 7 days after the date of transfer specified in the transfer order, the Register of the Probate Court shall file with the District Court that issued the order of transfer the original filings, orders, exhibits, and transcripts, if any, of the proceeding, together with a certified copy of all docket entries for the proceeding being transferred.

(c) Effect of Transfer. The transferred action shall be litigated in the District Court as if originally begun there, and the District Court shall have exclusive, continuing jurisdiction of all matters concerning the child(ren) involved in the transferred action pursuant to 4 M.R.S. § 152(5-A). Thereafter, any family matter, guardianship, adoption, name change, or other matter involving custody or

other parental rights with respect to that minor child or those minor children must be filed in the District Court.

(d) Determining Course of Proceedings after Transfer. Immediately after issuing the order of transfer, the District Court shall schedule a case management conference, which must be held no later than 28 days after the issuance of the transfer order. Participants in the conference shall include the parties involved in the District Court proceeding and the Probate Court case that has been transferred. At the conclusion of that conference, the court shall decide whether to consolidate for hearing the case transferred from the Probate Court with the action already pending in the District Court, and shall determine the course of both cases.

(e) Effect of Previous Orders. Any order of the Probate Court entered before transfer shall remain in force until modified by the District Court.

Advisory Note - July 2016

This new rule creates the procedures through which the District Courts will handle and process the guardianship, adoption, and name change cases that are transferred to them pursuant to Public Law 2015, chapter 460, “An Act To Ensure a Continuing Home Court for Cases Involving Children,” enacted by the 127th Maine Legislature, which became effective on July 29, 2016. It also provides a definition of “pending” to allow the court and parties to share an understanding of the term used in the new legislation. See the July 2015 Advisory Notes to Rule 100.

Pursuant to 18-A M.R.S. § 5-205, venue for guardianship cases in the Probate Court is in the county where the minor resides “or is present.” Pursuant to 18-A M.R.S. § 9-104, venue for adoption cases in the Probate Court is determined by a number of factors, including whether the child is being placed for adoption by the Department of Health and Human Services. Section 9-104(c) permits Probate Courts to transfer cases to other Probate Courts “in the interests of justice or for the convenience of the parties.” Similarly, 4 M.R.S. § 155(3) provides that venue for some family cases in the District Court is “in the division where either the plaintiff or the defendant resides,” but 4 M.R.S. § 155(8) allows the District Court to “transfer any case to another division for the convenience of parties or witnesses or in the interest of justice.” In order to ensure that the transfer of cases from Probate Court to District Court does, in fact, result in the establishment of a “home court” for families, each case involving a child that is transferred from the Probate Court

will be transferred to the District Court where the action involving that child is pending.