

RULE 127. PROTECTION FROM ABUSE CASES

(a) Handling of Any Pending Matters in Probate Court. The District Court presiding over any protection from abuse (PFA) matter involving the custody or parental rights of a minor child shall, at the first opportunity, determine whether there are any proceedings involving custody or other parental rights concerning that child currently filed or pending before a Probate Court. If the final hearing on a PFA request is not heard within 21 days, the District Court shall contact the Probate Court to facilitate a transfer of the pending Probate Court case. If a family matter (FM) filing occurs as a result of a PFA order, the court shall thereafter follow the directives of Rule 126 when handling the FM proceeding.

(b) Encouraging the Filing of a Family Matter Petition. Any PFA order that establishes or affects the custody or other parental rights of a minor child shall include a suggestion that one of the parties initiate an FM proceeding to establish a more permanent order regarding parental rights and responsibilities concerning the child. When the PFA order is inconsistent with an existing FM order, the PFA order shall suggest that one of the parties file a motion to amend the FM order. In determining whether to schedule a motion to amend that portion of a PFA order that establishes or affects the custody or other parental rights of a minor child, the court will consider the parties' action or inaction with regard to the initiation of an FM proceeding.

Advisory Note - July 2016

This new rule explains the role of the District Court when handling a PFA¹ proceeding involving minor child(ren). By determining whether there are other cases pending in either another District Court location or in a Probate Court that address some aspect of parental rights and responsibilities concerning the minor child(ren), the court will have an improved ability to manage the multiple cases involving the child(ren). See also the July 2016 Advisory Notes to Rule 100.

Because a petition requesting a PFA order does not always result in the issuance of any order, and because the final hearings on PFA requests must be heard within 21 days unless an extension is granted, the District Court is not required to contact the Probate Court to discuss the possible need for transfer for all PFAs. When a PFA is pending longer than 21 days, however, either because a

¹ Although 4 M.R.S. § 152(5-A) mentions protection from harassment cases as one of the possible "proceedings involving custody or other parental rights," a court has no authority to order parental rights and responsibilities under the protection from harassment statute. See 5 M.R.S. § 4655.

temporary order is extended or because the court has granted a motion to continue or to consolidate the PFA matter with an FM case, the District Court must contact the Probate Court and determine when to transfer any cases pending there.

In addition, the rule requires the court to “encourage” the filing of a proceeding that would result in a more permanent order establishing parental rights and responsibilities. The FDTF 2014 report recommended that a motion to amend the parental rights and responsibilities or child support provisions of a PFA should “trigger a requirement to open a family matters case.” That recommendation has been addressed here by allowing the court to determine whether and how to schedule such a motion.