II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

RULE 3. COMMENCEMENT OF ACTION

Except as otherwise provided in these rules, a civil action is commenced (1) by the service of a summons, complaint, and notice regarding Electronic Service or (2) by filing a complaint with the court. When method (1) is used, the complaint must be filed with the court within 20 days after completion of service. When method (2) is used, the return of service shall be filed with the court within 90 days after the filing of the complaint. If the complaint or the return of service is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.

Advisory Note– July 2018

The amendment to Rule 3, together with amendments to Rules 4, 5(b), 11, and 101 of the Maine Rules of Civil Procedure, are part of a package of simultaneous amendments to require represented parties to serve pleadings and other papers electronically upon one another or by delivering copies pursuant to Rule 5(b)(1) following service of the summons and complaint under Rule 4. Parties who are not represented by an attorney may opt in to Electronic Service.

A more detailed description of Electronic Service and the procedures for complying with its requirements is stated in the Advisory Note to Rule 5.

Advisory Committee's Note 1989

Rule 3 is amended to cure an omission which has existed since the original promulgation of the Rule. When a civil action is commenced by service, there is a 20-day time limit within which the complaint must be filed with the court. There is no comparable requirement that service be accomplished within a stated time when the action has been commenced by filing the complaint with the court. Although some leeway to account for

difficulties in making service is desirable, there have been recent instances of actions filed against easily served entities such as hospitals or housing authorities in which service has not been accomplished for a year or more after the filing of the complaint. Such delay is not only inappropriate and potentially prejudicial to defense preparation. It is also inconsistent with other measures recently taken to expedite the pretrial proceedings. *See* 1988 Amendment of M.R. Civ. P. 16.

In 1983, as part of a major revision of service of process procedures under which service is to be made by the plaintiff rather than by the United States marshal, Congress added Rule 4(j) to the Federal Rules of Civil Procedure. This provision imposed a 120-day time limit on service after filing and plainly reflected the concern of Congress that, with the clerk no longer controlling service, some sanction was necessary to avoid delay and abuse. Before the 1983 amendment, under Federal Rule 4(a), there was practice of dismissal for untimely service if process was not served "forthwith" by the marshal under the clerk's direction. Without even the support of "forthwith" in Maine Rule 4(b), Maine judges have been understandably reluctant to impose sanctions for untimely service, despite the encouragement of 1 Field, McKusick, and Wroth, *Maine Civil Practice* § 4-1 (2d ed. 1970). *But see* Order, *Dalot v. Smith*, No. CV-86-75 (Me. Super Ct., Franklin Co., 6-3-88) (Alexander, J.). [*See Dalot v. Smith*, 551 A.2d 448, 449 (Me. 1988).]

The present amendment addresses this situation by imposing a requirement that return of service must be filed within 90 days after the filing of the complaint with the sanction of dismissal and, in the event of a vexatious filing, imposition of attorney fees. Of course, in a case where a justifiable reason for further delay is present, the 90-day period may be enlarged by court order under M.R. Civ. P. 6(b). For similar rules in other states, *see* Vt. R. Civ. P. 3; Mass. R. Civ. P. 4(j) (eff. 7/1/88).

Advisory Committee's Note
January 1, 1973

By simultaneous amendments made to Rules 4A(c), 4B(e) and 64(c), either an action in which attachment of personal property or on trustee process is sought or an action of replevin may be commenced only by filing the complaint with the court. Any other civil action may still be commenced by the first method prescribed in Rule 3, namely, by service of a summons and

complaint. The qualifying phrase at the outset of Rule 3 is intended to refer to those provisions relating to attachments and replevin which prohibit in those circumstances the use of the first method for commencement of the action.

Although the attachment of real estate is, under Rule 4A as amended, still permitted without prior notice and hearing and therefore the action could be commenced without first filing the complaint with the court,* it is thought unnecessary to preserve the requirement in Rule 3 that the complaint be filed not later than 30 days after the first real estate attachment.

Advisory Committee's Note
December 31, 1967

This rule is unchanged except for the increase from 10 to 20 days of the period within which the complaint must be filed in court after service has been completed when method (1) for commencing the action has been used. The time for filing is increased because it has been reported that some lawyers have been caught by overlooking the 10-day rule. The error, when committed, is not a major one, since filing the complaint within the prescribed time is not a jurisdictional act and motions to permit late filing are commonly granted. Yet the Committee feels the increase to 20 days, corresponding generally to the time for filing a responsive pleading, would make for smoother operation of the rule.

Rule 4C(b) relating to arrest prescribes a 10-day period for filing the complaint in court on penalty that a defendant arrested on a *capias* writ would otherwise be released. Since arrest in civil actions is looked upon with disfavor, no lengthening of that period is proposed.

Reporter's Notes
December 1, 1959

This rule abolishes the practice of commencing actions by original writ. The first of the two methods for commencing an action is by the service of a summons and complaint prior to filing in court. This is analogous to existing

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* [Field, McKusick & Wroth comment that this is not true since the August 1, 1973, amendments. Field, McKusick & Wroth, *Maine Civil Practice* § 3.1 at 23 (Supp. 1981).]

practice at law under which an action is commenced by drawing a writ and placing it in the hands of an officer for service. Although original writs are no longer to be used, the possibility of commencing an action by service is retained in order not to lessen the effectiveness of attachment or trustee process. *See* Rules 4A and 4B.

If an action is commenced by this method, the complaint must be filed with the court within specified time limits. This changes the existing practice at law, where nothing need be entered in court until the day the writ is returnable. The provision for taxing the plaintiff with a reasonable attorney's fee if the court finds that an action was vexatiously commenced is new to Maine law.

The second method of commencing an action is by filing a complaint with the court. This is the exclusive method of commencing an action under the Federal Rules and corresponds to existing equity practice in Maine.