

RULE 80C. REVIEW OF FINAL AGENCY ACTION

(a) Mode of Review. A review of final agency action or the failure or refusal of an agency to act brought in the Superior Court pursuant to 5 M.R.S.A. § 11001 et seq., Maine Administrative Procedure Act, or in the District Court to review disciplinary decisions of occupational licensing boards and commissions under 4 M.R.S.A. § 152 (10) and 10 M.R.S.A. § 8003, shall be governed by these Rules of Civil Procedure as modified by this rule, except to the extent inconsistent with the provisions of a statute. Proceedings for judicial review of final agency action or the failure or refusal of an agency to act shall be commenced by filing a petition as provided by 5 M.R.S.A. § 11002(1) and the contents of the petition shall be as provided by 5 M.R.S.A. § 11002(2). A petition for review shall be served as provided by 5 M.R.S.A. § 11003. No responsive pleading need be filed except as provided by 5 M.R.S.A. § 11005. Leave to amend pleadings shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action.

(b) Time Limits; Stay. The time within which a review of final agency action or the failure or refusal of an agency to act may be sought shall be as provided by 5 M.R.S.A. § 11002(3). An application for a stay of final agency action shall be as provided by 5 M.R.S.A. § 11004.

(c) Manner and Scope of Review. The manner and scope of review of final agency action or the failure or refusal of an agency to act shall be as provided by 5 M.R.S.A. § 11007(2) through § 11007(4).

(d) Power of Court to Correct or Modify Record. Judicial review shall be confined to the record upon which the agency decision was based, except as provided by 5 M.R.S.A. § 11006(1). The reviewing court may require or permit subsequent corrections to the record as provided by 5 M.R.S.A. § 11006(2).

(e) Additional Evidence. A party who intends to request that the reviewing court take additional evidence or order the taking of additional evidence before an agency as provided by 5 M.R.S.A. § 11006(1) shall file a motion to that effect within 10 days after the record of the proceedings is filed under subdivision (f), but not before the record of proceedings is filed. The failure of a party to file such a motion shall constitute a waiver of any right to the taking of additional evidence. Upon the filing of a motion for the taking of additional evidence, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court specifying the future course of proceedings with that motion. The

moving party shall also file with the motion a detailed statement, in the nature of an offer of proof, of the evidence intended to be taken, except as provided below. That statement shall be sufficient to permit the court to make a proper determination as to whether the taking of additional evidence as presented in the motion and offer of proof is appropriate under this rule and if so to what extent. After hearing, the court shall issue an appropriate order specifying the future course of proceedings.

(f) Record. The agency shall file the complete record of the proceedings under review as provided by 5 M.R.S. § 11005. If the petitioner believes that the record filed by the agency either is incomplete or over-inclusive, the petitioner shall serve notice upon the agency within 10 days after the record is filed. This notice shall include specific proposals by the petitioner regarding additions to or deletions from the record filed by the agency. The parties shall attempt to agree on the contents of the record. If the parties cannot agree, the petitioner may request that the court modify the contents of the record. A copy of the agency's decision on appeal, whether written or transcribed, shall be included in the record. If the agency decision was based on or referenced a municipal ordinance, a state or local regulation, or a private and special law, a copy of the relevant section or sections from that ordinance, regulation, or private and special law, shall be included in the record. Copies of sections of the Maine Revised Statutes shall not be included in the record.

(g) Filing of Briefs. Unless otherwise ordered by the court, all parties to a review of governmental action shall file briefs. The petitioner shall file the petitioner's brief within 40 days after the date when the administrative agency files the record of the proceedings with the court. Any other party shall file that party's brief within 30 days after the service of the petitioner's brief, and the petitioner may file a reply brief 14 days after last service of the brief of any other party. However, no brief shall be filed less than 6 calendar days before the date set for oral argument. On a showing of good cause the court may increase or decrease the time limits prescribed in this subdivision.

(h) Consequence of Failure to File. If the petitioner fails to comply with subdivision (g) of this rule, the court may dismiss the action for want of prosecution. If any other party fails to comply, that party will not be heard at oral argument except by permission of the court.

(i) Joinder With Independent Action. If a claim for review of governmental action under this rule is joined with a claim alleging an independent basis for relief

from governmental action, the petition shall contain a separate count for each claim for relief asserted, setting forth the facts relied upon, the legal basis of the claim, and the relief requested. A party in a proceeding governed by this rule asserting such an independent basis for relief shall file a motion no later than 10 days after the petition is filed, requesting the court to specify the future course of proceedings. Upon the filing of such a motion, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court. After hearing, the court shall issue an order; provided that such a motion need not be filed in cases where the parties to the proceedings have filed with the court a stipulation as to the future course of proceedings.

(j) Discovery. In a proceeding governed by this rule, discovery shall be allowed as in other civil actions when such discovery is relevant either to the subject matter involved in an evidentiary hearing to which the discovering party may be entitled or to that involved in an independent claim joined with a claim for review of governmental action as provided in subdivision (i) of this rule. No other discovery shall be allowed in proceedings governed by this rule except upon order of court for good cause shown.

(k) Pretrial Procedure. In the absence of a court order, the pretrial procedure of Rule 16 shall not be applicable to a proceeding governed by this Rule.

(l) Scheduling of Oral Argument. Unless the court otherwise directs, all appeals shall be in order for oral argument 20 days after the date on which the responding party's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

(m) Appeal to the Law Court. If the court remands the case for further proceedings, all issues raised on the court's review of the agency action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such agency action. Appeal to the Law Court of a review proceeding in the court shall be as provided by 5 M.R.S.A. § 11008.

Advisory Committee's Note July 1, 2010

The amendments to Rule 80B(e) and 80C(f) are similar to the requirements of Rule 8(h)(2) of the Maine Rules of Appellate Procedure and clarify that in

appeals from State and municipal agency decisions, the decision appealed from, as well as any applicable state or local regulations, private and special laws or municipal ordinances, including the section or sections of the municipal ordinance that establish the authority of a municipal agency to act on the matter subject to the appeal, must be included in the record compiled for review. Copies of provisions of the Maine Revised Statutes should not be included in any record on appeal.

**Advisory Committee's Note
January 1, 2001**

P.L. 1999, c. 574, section B-6, amended 4 M.R.S.A. § 152(10) to confer upon the District Court exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to 10 M.R.S.A. § 8003, effective March 15, 2001. Since the statute also required the proceedings be conducted in accordance with the Administrative Procedure Act, substituting the references to "District Court" for "Superior Court" as necessary, an amendment to subdivision (a) of Rule 80C was necessary to prescribe the mode of review in the District Court of such disciplinary decisions. References in subdivisions (g), (l), and (m) to the "Superior Court" were changed to refer only to "court."

**Advisory Committee's Notes
May 1, 2000**

Subdivision (n), a transition provision governing actions filed prior to February 15, 1983 is eliminated as no longer necessary.

**Advisory Committee's Notes
March 1, 1998**

Rule 80C (e) is amended in response to *Service & Erection Co. v. State Tax Assessor*, 684 A.2d 1 (Me. 1996), which held that the rule is inconsistent with the present version of 36 M.R.S.A. § 151. The second sentence of the subdivision, which refers to section 151, and the fourth sentence have been deleted to make Rule 80C consistent with its purpose as the procedural means for review by the Superior Court of final agency action. The rule is not intended to prescribe the procedure for review where a statute provides for a hearing *de novo* or another, exclusive means for review.

**Advisory Committee's Notes
June 2, 1997**

Rule 80C(m) is amended to clarify that an order of remand from the Superior Court to the governmental agency 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
1990**

Rule 80C(e) is amended to make clear that a motion for additional evidence in the Superior Court on an appeal from an administrative agency may not be made until after the record is filed. The purpose of the amendment is to insure that both the opposing party and the court have the opportunity to consider the record in assessing whether taking additional evidence is warranted.

A similar amendment is simultaneously being made to Rule 80B(e).

**Advisory Committee's Notes
1984**

Rule 80C(l) is amended in terms identical to the simultaneous amendment of Rule 80B(l) making clear that after the briefing of an administrative appeal to the Superior Court is completed, scheduling for oral argument is automatic and is initiated by the clerk. *See* Advisory Committee's Note to that rule.

1983 Advisory Committee's Note to New Rule 80C

Rule 80C is added to provide a separate rule for proceedings to review final agency action or the failure or refusal of an agency to act brought pursuant to 5 M.R.S.A. § 11001 et seq. of the Maine Administrative Procedure Act (APA). The rule is an exercise of the independent power to adopt rules for such appeals as set forth in 5 M.R.S.A. § 11008(2). Prior to the adoption of this rule, APA appeals as well as non-APA appeals were governed by Rule 80B. That rule is simultaneously amended to effect the establishment of separate tracks for the two classes of appeals. Rule 80C incorporates the specific procedures governing review of final

agency action and the failure or refusal of an agency to act set forth in the APA, 5 M.R.S.A. § 11001 et seq. Where additional procedures have been adopted in the present rule, they have for the most part been borrowed from Rule 80B. Therefore, reference should be made to the Advisory Committee Notes to amended Rule 80B for discussion of the provisions of Rule 80C.

Note that judicial review of agency rulemaking is not governed by either Rule 80B or Rule 80C. The APA, in 5 M.R.S.A. § 8058, specifically provides that review of agency rules shall be instituted by an action for declaratory judgment pursuant to 14 M.R.S.A. § 5951 et seq., which is incorporated by Rule 57, or by collateral attack in an enforcement proceeding.

Rule 80C(a) establishes Rule 80C and other applicable provisions of the Rule of Civil Procedure as the procedural mode for review under the APA, "except to the extent inconsistent with the provisions of a statute." Like the comparable provision of Rule SOB(a), this clause refers to direct functional clash. See Advisory Committee's Note to 1983 amendment of that rule. There should be few instances of such clash, since for convenience Rule 80C incorporates in this subdivision and elsewhere the appropriate provisions of the APA concerning judicial review. Thus, this subdivision incorporates provisions of 5 M.R.S.A. § 11002(1) providing for the filing of a petition for judicial review in an appropriate venue, 5 M.R.S.A. § 11002(2) providing specifically for the contents of the petition, and 5 M.R.S.A. § 11003 providing for service of the petition by mail. The rule also incorporates 5 M.R.S.A. § 11005 providing that a responsive pleading is necessary only when required by order of the court. The final sentence of the subdivision, providing for free amendment of the pleadings, is adapted from Rule 80B(a).

Rule 80C(b) incorporates the 30 and 40-day time limits for filing a petition provided by 5 M.R.S.A. § 11002(3) and the provision of 5 M.R.S.A. § 11004 for a stay upon application to the agency or motion to the Superior Court.

Rule 80C(c) incorporates the provisions of 5 M.R.S.A. § 11007(2)–(4) providing for manner of trial, the integrity of agency decisions on questions of fact, and the form of relief and scope of review that the reviewing court may award.

Rule 80C(d) incorporates 5 M.R.S.A. § 11006(1) limiting review to the record, except for the specific situations where additional evidence may be taken provided in subparagraphs A–D of that paragraph. The subdivision also

incorporates 5 M.R.S.A. § 11006(2) permitting the court to require or allow subsequent corrections to the record.

Rule 80C(e) provides the procedure for taking additional evidence when appropriate under 5 M.R.S.A. § 11006(1). The subdivision is basically similar to Rule 80B(d) as amended in August 1981 and February 1983. See Advisory Committee's Notes to those amendments. Rule 80C(e) creates an exception to the requirement of a detailed statement of evidence which a party, moving for the taking of additional evidence, intends to be taken for cases where a statute specifically provides that the exclusive manner for review shall be a de novo hearing in Superior Court. An example of such a statute is 36 M.R.S.A. § 151 providing for a de novo review of tax assessments by the State Tax Assessor. In such cases it would be unnecessarily burdensome to require petitions to file a detailed statement of proposed evidence because the statute, rather than the court, determines the availability of a trial of facts. This subdivision also makes a special provision for the filing of briefs in tax assessment appeals because there is no record. Other requirements in Rule 80C applicable to such cases may be altered by the exception in Rule 80C for inconsistent statutory provisions or by a procedural order of the Superior Court under Rule 80C (e) .

Rule 80C (f) incorporates 5 M.R.S.A. § 11005 providing time periods for the filing of the agency record in the court. The subdivision also provides a procedure for supplementation or simplification of the record, as well as a provision adopted from Rule 80B encouraging agreement on the contents of the record.

Rule 80C(g) is similar to Rule 80B(g) added by the August 1981 amendments and amended in February 1983. See Advisory Committee's Notes to those amendments.

Rule 80C (h) is adapted from Rule 80B(h) added by the August 1981 amendments. See Advisory Committee's Note to that amendment.

Rule 80C(i) is similar to the contemporaneous amendment adding Rule 80B(i). See Advisory Committee's Note to that amendment.

Rule 80C(j) is similar to the contemporaneous amendment adding Rule 80B (j). See Advisory Committee's Note to that amendment.

Rule 80C(k) is similar to the contemporaneous amendment adding Rule 80B(k). See Advisory Committee's Note to that amendment.

Rule 80C(l) is similar to what is now 80B(1) originally added as Rule 80B(1) by the August 1981 amendments. See Advisory Committee's Note to that amendment.

Rule 80C(m) incorporates the provisions of 5 M.R.S.A. § 11008(1) for appeal from the Superior Court to the Law Court as in other civil actions.

Rule 80C(n) is similar in effect to Rule 80B(n) adopted by contemporaneous amendment. See Advisory Committee's Note to that amendment.