

RULE 80K. LAND USE VIOLATIONS

(a) Applicability. Except as otherwise provided in this rule, these rules shall apply to proceedings in the District Court involving alleged violations of land use laws and ordinances, whether administered and enforced primarily at the state or the local level, including but not limited to, those statutes, ordinances, codes, rules and regulations set forth in 4 M.R.S.A. § 152(6).

(b) Commencement of Proceedings; Service.

(1) *In General.* A proceeding under this rule shall be commenced by one of the following methods:

(A) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule and served upon the alleged violator within the state by any certified municipal official, any certified employee of the Department of Environmental Protection, or any other official authorized to serve civil process to enforce a statute, ordinance, code, rule or regulation to which this rule applies, if such official has reasonable grounds to believe that a violation of any provision of law as to which the official is authorized to serve process and to which this rule applies has been or is being committed. Service under this subparagraph shall be made upon an individual by delivering a copy of the Land Use Citation and Complaint to the individual personally and, if the alleged violator is an infant or incompetent person, personally to the appropriate individual specified in Rule 4(d)(2) or (3) of these rules. Service under this subparagraph shall be made upon any other entity by delivering a copy of the citation personally to one of the appropriate individuals specified in Rule 4(d)(4)-(14) of these rules.

(B) A Land Use Citation and Complaint may be filled out in the manner prescribed in paragraph (1) of subdivision (c) of this rule by any public official who has reasonable grounds to believe that a violation of any provision of law that the official is authorized to enforce and to which this rule applies has been or is being committed. The complainant shall transmit the Land Use Citation and Complaint to any officer or person authorized to serve civil process under Rule 4(c) of these rules, who may serve it, or cause it to be served, upon the alleged violator by any method provided in Rule 4(d), (e), (f), (g), or (j) of these rules.

(C) In any proceeding under this rule in which a temporary restraining order is sought, the original of a Land Use Citation and Complaint, filled out as prescribed in paragraph (2) of subdivision (c) of this rule may be filed with the court by any person authorized under subdivision (h) of this rule to represent the plaintiff, or by the plaintiff's attorney, if such person has reasonable grounds to believe that a violation of any provision of law as to which the person has such authority is being committed and that immediate and irreparable injury, loss, or damage will result from such violation before the alleged violator can be heard personally or by counsel in opposition to the order. The person filing the Land Use Citation and Complaint shall, at the earliest opportunity, serve, or cause to be served, a copy of it on the alleged violator by any method provided in subparagraph (A) or (B) of this paragraph, together with notice of the hearing on the preliminary injunction.

(2) *Additional Service on Property Owner.* When the alleged violator is not the owner of the property on which the violation is alleged to have occurred or is occurring, the person making service on the alleged violator shall serve, or cause to be served, a copy of the Land Use Citation and Complaint upon the owner of the property by any appropriate method provided in Rule 4 of these rules.

(3) *Return of Service.* As soon as practicable after service upon the alleged land use violator, and the property owner if appropriate, the person making service shall cause the original of the Land Use Citation and Complaint to be filed with the court, together with the appropriate proof of service as provided in Rule 4(h) or (j) of these rules.

(4) *Proceedings in Name of Municipality or State.* All proceedings arising under the provisions of locally administered and enforced laws and ordinances or regulations shall be brought in the name and to the use of the municipality. All proceedings arising under laws administered or enforced by the State shall be brought in the name of the State.

(c) Content of Land Use Citation and Complaint.

(1) A Land Use Citation and Complaint that is to be served as provided in subparagraph (1)(A) or (B) of subdivision (b) of this rule shall contain the name and address of the alleged violator; the name and address of the property owner if different; the time and place of the alleged violation or, if they are not known, the time and place at which it was first observed by the complainant; a

brief description of the alleged violation; a summary of the law or ordinance provision which is alleged to have been violated, including the penalties for violation; if a preliminary injunction is sought, a statement to that effect; the time, date, and place the alleged violator is to appear in court; where applicable, a statement that the alleged violator was advised of the violation; the signature and title of the complainant; and the signature of the alleged violator acknowledging receipt of the citation and complaint or a statement that the alleged violator refused to sign, or was unable to sign. If the violation alleged is of a state agency rule or a municipal ordinance or regulation, an attested or certified copy of the section or sections alleged to have been violated, together with a statement describing the place where the complete text may be obtained, shall be attached to the original of the Land Use Citation and Complaint. The Land Use Citation and Complaint shall notify the alleged violator that in the event of failure to appear on the date specified, a judgment by default may be entered.

(2) A Land Use Citation and Complaint that is to be filed with the court as provided in subparagraph (1)(C) of subdivision (b) of this rule shall contain the matters provided in paragraph (1) of this subdivision and a statement that a temporary restraining order is sought. It shall be accompanied by the affidavit and the certificate required by Rule 65(a) of these rules.

No other summons, complaint, or pleading shall be required of the municipality or the State, but motions for appropriate amendment of the Land Use Citation and Complaint shall be freely granted.

(d) Temporary Restraining Order and Preliminary Injunction: Security. The applicant for a temporary restraining order or a preliminary injunction under this rule shall not be required to give security as a condition upon the issuance thereof.

(e) Pleadings of Defendant.

(1) *Oral*. The alleged violator shall appear at the time and place specified, either personally or by counsel, and shall answer to the complaint orally.

(2) *No Joinder*. Proceedings pursuant to this rule shall not be joined with any action other than another proceeding pursuant to this rule, nor shall an alleged violator file a counterclaim or cross-claim.

(f) Venue. A land use violation proceeding under this rule shall be brought in the division in which the violation is alleged to have been committed.

(g) Discovery. Discovery shall be had only by agreement of the parties or by order of the court on motion for good cause shown.

(h) Authority of Complainant. A person who is not an attorney may represent a municipality under 12 M.R.S.A. § 4812-C(2), 30-A M.R.S.A. § 4221(2), or 30-A M.R.S.A. § 4452(1), or the State under 38 M.R.S.A. § 342(7), if the person files with the court when first appearing a written authorization from the municipal officers or the Commissioner of the Department of Environmental Protection, as appropriate, and a current certificate of familiarity with court procedures awarded under a program established by the Commissioner of Human Services as provided in 30-A M.R.S.A. § 4221(2).

(i) Standard of Proof. Adjudication of an alleged land use violation shall be by a preponderance of the evidence.

(j) Appeal. A party entitled to appeal may do so as in other civil actions.

(k) Alternative Dispute Resolution: Alternative Dispute Resolution, as agreed to by the parties or as required by law, shall be conducted pursuant to the processes specified in Rule 92(a)(3).

Advisory Committee's Note
July 1, 2010

Implementation of M.R. Civ. P. 80K(k) has indicated the need for more clarity regarding the mediation processes that apply to Land Use Violation Cases. This amendment to the rules clarifies that when an alternative dispute resolution processes is agreed to by the parties or required by statute, the referral provisions of M.R. Civ. P. 92(a)(3) will apply. Pursuant to M.R. Civ. P. 92(a)(3)(A), when the referral to mediation is made through CADRES, the parties shall be subject to the administrative fee set out in the Court's Fee Schedule.

Advisory Committee's Notes
February 15, 1996

Rule 80K(h) is amended to correct obsolete statutory references.

Advisory Committee's Notes
1993

Rule 80K(b)(1)(B) is amended to eliminate the procedure under which a District Court clerk could fill out and deliver for service a Land Use Citation and Complaint upon examination of the complainant and any witnesses and a finding of reasonable grounds to believe that a land use violation had been committed. This provision represents an unnecessary step for land use enforcement officials who are not authorized or may not wish to make service and imposes an undue burden upon clerks who may have difficulty in applying the standard. Under the amended rule, if an official with reasonable grounds cannot, or does not wish to, make service in person under Rule 80K(b)(1)(A), the official may transmit the process directly to an officer or other person authorized to serve process under Rule 4(c), and service may be had by one of the methods of service of civil process provided by Rule 4.

Rule 80K(c) is amended by deleting former paragraph (2) providing for the content of a citation and complaint filled out by the clerk and by renumbering former paragraph (3) as paragraph (2).

Comparable amendments are being made simultaneously in Rules 80F(b) and 80H(b) and (c).

Advisory Committee's Notes

1990

Rule 80K(b)(1)(A) is amended to simplify and clarify the way in which individuals authorized to serve process in land use violation proceedings are identified. The statutory provisions in the Rule as originally promulgated have been repealed and replaced. *See, e.g.*, former 12 M.R.S.A. § 4812-C(2), now 38 M.R.S.A. § 441; former 30 M.R.S.A. § 4966, now 30-A M.R.S.A. § 4506. The amendment describes in generic terms those categories of state and local officials originally intended to be empowered to serve process. These individuals must still be certified under the statute and rule and must have specific statutory authority to serve process in the types of actions to which the rule applies. These include certain land use violations by virtue of the incorporation of 4 M.R.S.A. § 152(6) in Rule 80K(a), as well as other proceedings. *See, e.g.*, 38 M.R.S.A. § 480-R (game wardens and marine patrol officers in natural resource violations).

Advisory Committee's Notes

1987

Rule 80K(b)(2) is amended to eliminate the provision for service upon the individual upon whom property taxes are assessed in the case of inability to find a non-violator owner. The various forms of substituted service upon the owner provided by M.R. Civ. P. 4 as incorporated in Rule 80K(b)(1)(A), (B), are more effective and constitutionally appropriate means of giving notice to the absent owner.

Rule 80K(c)(1) is amended to provide that only a copy of the section or sections of an agency rule or municipal ordinance or regulation that has been violated need be attached to the Land Use Citation and Complaint for service, although the complaint must also contain a statement informing the defendant where he may obtain the complete text. The amendment reflects the fact that many regulations and ordinances are of a bulk that makes inclusion in the complaint impracticable.

Advisory Committee's Notes 1984

Rule 80K is added to implement 1983 Laws, ch. 796, enacted by the 111th Legislature effective July 25, 1984. The basic purpose of the act, which was originally proposed by the Legislature's Commission on Local Land Use Violations, is to assure the more effective and efficient enforcement of provisions of state and local law pertaining to land use and environmental protection.

The act achieves this purpose in two principal ways: (1) 4 M.R.S.A. § 152 is amended to vest in the District Court equitable jurisdiction in proceedings under the principal statutory land use and environmental protection provisions and regulations and ordinances adopted pursuant thereto; (2) 4 M.R.S.A. § 807 is amended to provide that appearance in court by certain authorized officials representing a municipality or the state in proceedings under those provisions is not the unauthorized practice of law. Other provisions of the act grant to certain state and local officials land use enforcement powers, including powers to serve civil process and represent the municipality when authorized in land use violation proceedings, and consolidate and make uniform the remedies and penalties for such violations.

Rule 80K, which is based on a draft prepared by the Commission, is intended to provide a summary procedure to implement the provisions of Chapter 796. The procedure is similar in approach to that provided for traffic infractions under M.D.C.Civ.R. 80F and civil violations under M.D.C.Civ.R. 80H.

Rule 80K(a) sets forth the basic proposition that the District Court Civil Rules are generally applicable to proceedings for violations of land use laws as to which the District Court has jurisdiction under 4 M.R.S.A. § 152(6). The general applicability of the District Court Civil Rules to these proceedings is limited and controlled by the specific provisions of Rule 80K. Proceedings to which the rule is applicable, as set forth in 4 M.R.S.A. § 152(6), include, but are not limited to,

The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A; minimum lot size law, Title 12, sections 4807 to 4807-G; shoreland zoning ordinances adopted pursuant to Title 12, sections 4811 to 4817; the Alteration of Rivers, Streams and Brooks law, Title 12, sections 7776-7780; the plumbing and subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to Title 22, section 42; laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648; local ordinances pursuant to Title 22, section 2642; local ordinances adopted pursuant to Title 30, section 1917; local building codes adopted pursuant to Title 30, sections 1917 and 2151; Title 30, chapter 215, subchapter 1, automobile junkyards and subchapter X, regulation and inspection of plumbing; Title 30, section 4359, malfunctioning domestic sewage disposal units; Title 30, section 4956, the subdivision law, and local subdivision ordinances adopted pursuant to Title 30, section 1917 and subdivision regulations adopted pursuant to Title 30, section 4956; local zoning ordinances adopted pursuant to Title 30, section 1917 and in accordance with Title 30, section 4962; the Great Ponds Act, Title 38, sections 386 to 396; the Alteration of Coastal Wetlands Act, Title 38, sections 471 to 476 and 478; and the Site Location of Development Act, Title 38, sections 481 to 485 and 488 to 490.

This jurisdiction is expressly stated by 4 M.R.S.A. § 152(6) to be concurrent with that of the Superior Court. No summary procedure has been established for the Superior Court, however a land use violation proceeding brought in that court will be subject to the general provisions of the Maine Rules of Civil Procedure. Note that, in contrast to traffic infraction proceedings under M.D.C.Civ.R. 80F and civil violation proceedings under M.D.C.Civ.R. 80H, land use violation proceedings may be removed to the Superior Court under M.D.C.Civ.R. 73(h).

Rule 80K(b) provides three methods by which a proceeding under the summary provisions of this rule must be commenced and gives details of the manner of serving process under each. The rule is similar to M.D.C.Civ.R. 80F(b) and 80H(b). Under Rule 80K(b)(1)(A) a state or local land use enforcement officer who is authorized to serve civil process under the applicable statutory provision may make personal service of the Land Use Citation and Complaint within the state upon an alleged violator or his appropriate agent for the receipt of process if the officer has reasonable grounds to believe that a provision of law within his authority has been violated. Appropriate provisions of M.R. Civ. P. 4(d) are incorporated by reference. The Land Use Citation and Complaint is Official Form 2H, the content of which is prescribed by Rule 80K(c).

Rule 80K(b)(1)(B) provides an alternate means of commencing a land use violation proceeding by service, to be used either when service cannot be accomplished by a land use enforcement officer authorized by statute or when service must be made other than by delivery in hand within the state to the alleged violator or his appropriate agent. In such a case, any state or municipal official charged with enforcement of a state or local land use provision may make complaint to a District Court clerk. If the clerk finds “reasonable grounds” to believe that a violation has taken place, the clerk is to issue a Land Use Citation and Complaint, which then may be served by any person authorized to serve civil process under M.R. Civ. P. 4(c). Since that rule permits service not only by sheriffs, their deputies, and constables, but by other persons “authorized by law,” service under Rule 80K(b)(1)(B) may be made by a state or local land use enforcement officer having the requisite statutory authorization. The net effect of subparagraph (B) is to assure the independent scrutiny of a representative of the Judicial Department in any case where a land use enforcement officer or other official is seeking the aid of another type of officer to serve process or in which a land use enforcement officer wishes to serve process by a means other than in hand delivery within the state.

Rule 80K(b)(1)(C) permits commencement of a land use violation proceeding by filing with the court when a temporary restraining order is sought. This alternative is made available in such a case because the essence of a temporary restraining order proceeding is the inability to give timely notice. If such notice can be given, the proceeding in effect becomes one for a preliminary injunction, and service may be accomplished as provided in Rule 80K(b)(1)(A) or (B). *See* 2 Field, McKusick and Wroth, *Maine Civil Practice* §§ 65.2-65.4 (2d ed. 1970). The proceeding for a temporary restraining order may be commenced under this subparagraph only by a land use enforcement officer who has the

specific authorization of the municipal officers or appropriate state official to represent the municipality or state in court under the special provisions of 4 M.R.S.A. § 807 as amended, or by an attorney for the plaintiff. *See* Rule 80K(h). The officer must have reasonable grounds to believe not only that a violation has been committed but that immediate and irreparable harm will result. As in any proceeding for a temporary restraining order under M.R. Civ. P. 65(a), the Land Use Citation and Complaint must be accompanied by a separate affidavit to specific facts showing irreparable harm. A certificate setting forth the reasons why notice cannot be given must also be filed. *See* Rule 80K(c)(3). When a proceeding is commenced under this subparagraph, a copy of the papers filed and a notice of the hearing on the preliminary injunction must be served on the alleged violator as soon as possible.

Rule 80K(b)(2) provides that when the alleged violator is not the land owner, as for example when a lessee or contractor is causing a problem, a copy of the Land Use Citation and Complaint is to be served upon the land owner. The purpose of this provision is to provide notice to the property owner so that he may intervene to protect his own interests. Unless the property owner is made a party defendant by appropriate allegation in the original or amended Land Use Citation and Complaint, he is not bound by the judgment by virtue of this service. Of course, by virtue of M.R. Civ. P. 65(d) a property owner who was a person “in active concert or participation with” a party defendant would be bound by a temporary restraining order or injunction of which he had received actual notice.

Rule 80K(b)(3) incorporates the proof of service requirements of M.R. Civ. P. 4(h) and (j)(2). The reference in Rule 4(h) to “plaintiff’s attorney” should be understood as referring to any enforcement officer authorized to represent the state or a municipality under Rule 80K(h).

Rule 80K(b)(4) is taken from M.D.C.Civ.R. 80H(b). It carries forward the intent of the last sentence of 30 M.R.S.A. § 4966, enacted by 1983 Laws, ch. 796. Note that under 12 M.R.S.A. § 4815, the Attorney General or a district attorney may enforce shoreland zoning ordinances on behalf of the state. In such a case, the effect of Rule 80K(b)(4) is that such proceedings are brought in the name and to the use of the state, rather than of the municipality.

Rule 80K(c), which is similar to M.D.C.Civ.R. 80F(c), 80H(c), sets forth the required contents of the Land Use Citation and Complaint. To insure uniformity of practice throughout the state, a new District Court Civil Form 2H is being

promulgated simultaneously with the rule. This form, which will be made available in printed format, should be used for all proceedings under Rule 80K.

Rule 80K(c)(1) sets forth the basic requirements. Note that, if the proceeding is for a violation of a state agency regulation or municipal ordinance, a certified copy of the provision in question must be attached to the Land Use Citation and Complaint. This requirement is imposed as an aid in proving provisions of law which are not the subject of judicial notice. Service of the certified copy upon the alleged violator provides notice to him of the source and authority of the provision in question, and filing with the court assures that the copy is available to be offered in evidence. The requirement does not relieve the plaintiff of the obligation to offer the certified copy formally in evidence and to sustain his burden of proof that the copy is what it purports to be. *See* 30 M.R.S.A. §§ 2154, 2155; Field & Murray, *Maine Evidence* § 201.1 (1976). Rule 80K(c)(2) contains additional matter intended to adapt the form to the situation where it is issued by the clerk rather than an enforcement officer. Rule 80K(c)(3) adds the further specific requirement for a proceeding in which a temporary restraining order is sought that the affidavit of facts showing irreparable harm and the certificate concerning reasons for lack of notice required by M.R. Civ. P. 65(a) be filed with the Land Use Citation and Complaint.

Rule 80K(d) varies M.R. Civ. P. 65(c) by eliminating the requirement of security as a condition upon issuance of a temporary restraining order or preliminary injunction. This requirement was deemed unnecessary in light of the presumed financial responsibility of the state and its municipalities, who will be the only plaintiffs under this rule. In other respects, M.R. Civ. P. 65 covers injunctive relief by virtue of M.D.C.Civ.R. 65.

Rule 80K(e) is patterned on M.D.C.Civ.R. 80F(d), 80H(d). Consistent with the summary procedure contemplated by Rule 80K, subdivision (e) provides that the only responsive pleading required or permitted is the oral answer of the alleged violator, to be given in open court on the return date specified in the Land Use Citation and Complaint. The only joinder permitted under the rule is of other land use violation proceedings, and no counterclaim or cross-claim is to be filed. The rule contemplates that at the appearance of the defendant, if issues of law or fact are raised by the pleadings, the court will at that time set whatever hearing schedule is appropriate, whether on the day of the initial appearance or a later date. If the answer raises no issues, the case is ripe for judgment. *See* 2 Field, McKusick, and Wroth, *Maine Civil Practice*, §§ 180F.3, 180H.3, (2d ed. 1970, Supp. 1981).

Rule 80K(f) limits venue to the division of the District Court in which the violation is alleged to have been committed. *See* M.D.C.Civ.R. 80F(e), 80H(e).

Under Rule 80K(g) discovery may be had only by agreement or by court order on a showing of good cause. *See* M.D.C.Civ.R. 80F(f), 80H(f).

Rule 80K(h) makes clear that a non-lawyer state or municipal enforcement officer who is authorized to represent the state or a municipality under one of the statutory authorizations recited in the rule must file in the proceeding both written authorization from the appropriate officials and a certificate indicating that he has completed a current program of familiarization with court procedure conducted by the Commissioner of Human Services under the authority of 30 M.R.S.A. § 3222(2).

Rule 80K(i) provides that the standard of proof in land use violation proceedings shall be proof by a preponderance of the evidence, the usual standard in civil actions. *See* M.D.C. Civ. R. 80F(h), 80H(h).

Rule 80K(j) provides for appeal from decisions in land use violation proceedings as in other civil actions in the District Court. *See* M.D.C.Civ.R. 73(a). Compare M.D.C. Civ. R. 80F(j), 80H(j).

Note that no special provision is made in the rule for costs, because attorney fees, expert witness fees, and costs are provided by statute. 30 M.R.S.A. § 4966(3)(D).