

STATE OF MAINE  
SUPREME JUDICIAL COURT  
**DRAFT** AMENDMENTS TO  
MAINE RULES OF CIVIL PROCEDURE  
FAMILY DIVISION RULES

1. Rule 100A of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 100A. FORM OF ACTION.**

An action under ~~these~~ Family Division Rules shall be known as a Family Division action, docketed as a Family Matter (FM).

2. Rule 101 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 101. COMMENCEMENT OF ACTION**

**(a) Filing Initiation of Action.** Except as otherwise provided by these rules, or by statute, a every Family Division action shall be initiated by the filing and service of ~~(1)~~ a complaint, ~~(2)~~ a petition, or ~~(3)~~ a motion for post-judgment relief.

**(b) Requirements for All Complaints, Petitions, and Motions.** Every complaint, petition, or motion must be signed by the party initiating the action and must be filed on the Family Division-approved form that corresponds with the type of filing. Accompanying

**(c) Documents That Must Be Served with Every Complaint, Petition, or Motion.** Except as may be provided in these rules or by statutes, accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. Also accompanying any complaint, petition, or motion for post-judgment relief shall be a notice

regarding Electronic Service. ~~The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.~~

~~**(b) Complaint, Petition or Motion Form.** In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence. A party seeking to be adjudicated a de facto parent of a child must file with his or her initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship as required in 19-A M.R.S. § 1891. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.~~

**(d) Additional Documents Required in Divorce, Parental Rights and Responsibilities, Annulment and Judicial Separation Actions.**

(1) Any individual initiating a divorce, parental rights and responsibilities, annulment, or judicial separation action or filing a post-judgment motion in such an action must also file a summary complaint, summary petition, or summary post-judgment motion, using a court-approved form. Clerks shall return any pleading that are not accompanied by the summary document, shall return any summary documents that are not on court-approved forms and, pursuant to M.R. Civ. P. 5(f), shall not docket the attempted filing of the action.

(2) If the case involves any determination of parental rights and responsibilities, the child custody information required by 19-A M.R.S. § 1753 must be included and must be signed under oath.

(3) If child support is an issue, the party initiating the action must also file a child support affidavit, as required by Rule 108.

**(e) Affidavits Required in all Petitions Seeking De Facto Parentage Status or Grandparent Visitation.** Any person seeking to be adjudicated a de facto parent of a child or seeking grandparent visitation must file with his or her initial pleadings an affidavit on a court-approved form alleging under oath specific facts to support the existence of a de facto parent relationship as required in 19-A M.R.S. § 1891, or sufficient facts to support the grandparent's standing under subsection under 19-A M.R.S. § 1803(1). The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.

**(f) Time of Filing.** The time for filing the complaint, petition, or motion and filing any return of service with the court shall be as specified in Rule 3.

**(g) Service.** All complaints, petitions, or motions for post-judgment relief, with their required accompanying documents, shall be personally served upon the other party or parties in accordance with Rule 4, except as may be provided in these rules or by statute. In all actions under this chapter, including motions for post-judgment relief, personal service may be made by registered or certified mail, with restricted delivery and return receipt requested as permitted under Rule 4(f)(2). This form of service may be made in or outside of the state, provided that the party being served is subject to the court's jurisdiction.

**(e) (h) Minor as a Party.** Notwithstanding the provisions of Rule 17(b), a minor party to any action under this chapter need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Nothing in this rule shall be construed to change the current and limited matters in which a minor may be a party to the action.

### **Advisory Note - \_\_\_\_ 2019**

Rule 101 has been substantially redrafted to improve its readability, and to reflect the Judicial Branch's move to electronic filing and digital court records. Rule 101(c) was created to impose the requirement of summary complaints and summary post-judgment motions on parties litigating divorce, parental rights and responsibilities, annulment, or judicial separation actions. The Judicial Branch has created summary forms to accompany any complaints or motions in these types of actions. The parties are required to use these

forms and, because court clerks cannot be responsible for determining whether a document contains any non-public information, the clerks are required to reject any documents filed that are not on court-approved forms. See DCRA R. 9(d), M.R. Civ.P. 5(f).

Rule 101(e) was created to provide clear instructions to those individuals seeking to become de facto parents or to establish grandparent visitation.

Rule 101(f) and (g) provide clearer directions for guidance on service and filing.

3. Rule 102 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 102. CONFIDENTIALITY PUBLIC ACCESS TO COURT RECORDS,  
PUBLIC ACCESS TO COURT PROCEEDINGS, AND IMPOUNDING OR  
SEALING INFORMATION WITHIN A FILE**

**(a) Public Access to Court Records.** Except for summary complaints, summary post-judgment motions, registries of action, and summary final judgments in divorce, parental rights and responsibilities, annulment, and judicial separation actions, electronic court records in Family Matters actions are not accessible to the public. To ensure that no inadvertent public access occurs, all documents other than the summary complaints in family matters shall be clearly and conspicuously marked “NOT FOR PUBLIC DISCLOSURE.”

**(b) Public Access to Court Proceedings Concerning Parental Rights and Responsibilities.** At the request of a party, the court shall exclude the public from the court proceedings, unless another party objects.

**(c) Sealing or Impounding Information from Another Party.** If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or minor child would be jeopardized by disclosure to another party of identifying information appearing in any document filed with the court, the clerk shall seal the identifying information and shall not disclose the information to any other party or to the general public. Disclosure may be ordered only after a hearing in which the court takes into consideration the health, safety, and liberty of the party or minor child and determines that the

~~disclosure is in the interest of justice. If the other party objects to the sealing or impounding, the court must hold a hearing at which the court shall take into consideration the health, safety, and liberty of the party or minor child and shall determine whether the sealing or impounding of the identifying information is in the interest of justice. The court is authorized to enter any orders in furtherance of the purposes of this section. A party filing an action for parentage by assisted reproduction or gestational carrier agreement may request an order sealing the records from the public to protect the privacy of the child and the parties. Adoption records are confidential pursuant to 18-A M.R.S. § 9-310.~~

### **Advisory Note - \_\_\_\_ 2019**

Rule 102 has been substantially redrafted. Rule 102(a) now ensures that access to court records in family cases complies with the Digital Court Records Access Rules. Pursuant to DCRA Rule 6(b), most digital court records in Family Matters are not accessible by the public. DCRA Rule 10 allows for public access to summary complaints and summary post-judgment motions, the registries of actions, and the summary of the final judgment in divorce, parental rights and responsibilities, annulment, and judicial separation cases. DCRA Rule 9 requires that all non-public, sealed, or impounded documents be clearly marked as “NOT FOR PUBLIC DISCLOSURE.” Rule 102(a) imposes the obligations created in DCRA 9 on family litigants.

Rule 102(b) reflects 19-A M.R.S. § 1656, which allows parties to request that the public be excluded from hearings involving parental rights and responsibilities. This provision was added to Rule 102 in order to have in one place the references to public access.

Rule 102(c) clarifies the process to be used when a party is requesting that identifying information concerning that party or a minor child be sealed or impounded against another party. References to the general public were removed because family matters records will not be accessible to the public.

4. Rule 103 of the Maine Rules of Civil Procedure is repealed and reserved.

### **Advisory Note - \_\_\_\_ 2019**

The directives of Rule 103 have been moved to Rule 101(f).

5. Rule 104 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 104. PRELIMINARY INJUNCTION**

**(a) Preliminary Injunction.** In all actions for divorce, judicial separation, or spousal or child support following a divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, upon commencement of the action, shall issue a preliminary injunction on a court-approved form including requirements specified by statute.

(1) The preliminary injunction shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and, if the plaintiff is represented, state the name and address, including email address, of the plaintiff's attorney. The plaintiff shall obtain the preliminary injunction form from the clerk and complete it before filing.

(2) The plaintiff shall serve the preliminary injunction, along with the summons, ~~and~~ complaint, or motion, and Notice of Electronic Service, upon the defendant in accordance with Rule 4 and Rule 103. The preliminary injunction is effective against the plaintiff upon the commencement of the action. It is effective against the defendant upon service of a copy of both the complaint or motion and the preliminary injunction order. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint or motion to be served.

(3) The preliminary injunction remains in effect until entry of a final judgment, until the action is dismissed or until the preliminary injunction is revoked or modified by the court. It is enforceable by all remedies made available by law, including contempt of court.

**(b) Revocation or Modification.** A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification. A motion for revocation or modification of the preliminary injunction does not require a mediation before a hearing is held. On 7 days-notice to the other party or on shorter notice as the court may order, the court shall proceed to hear and determine the motion as expeditiously as justice requires.

**(c) Post-Judgment Proceedings.** The injunction authorized in this section does not apply to post-judgment actions except as provided in subdivision (a)(iii) above.

### **Advisory Note - \_\_\_ 2019**

The changes reflect the court's approval of electronic service, and its implementation of electronic filing and case management systems.

6. Rule 105 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 105. ANSWER; RESPONSE; COUNTERCLAIM**

~~(a) Answer and Appearance. Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 21 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 21 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). A party who intends to respond to a de facto parentage complaint must file an affidavit addressing the factors of 19-A M.R.S. § 1891(3)(A)-(E), and shall serve it on all parties to the proceeding. When the court schedules a hearing on any matter before the 21-day time for filing an appearance and answer, the appearance and answer shall be filed before the~~

~~time set for hearing if the hearing notice was served with the complaint, petition or motion.~~

~~If parental rights and responsibilities concerning a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an emancipation action, an action to establish the guardianship of a minor child, or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.~~

~~A party who does not file an answer or response may enter an appearance before commencement of a hearing and be heard on issues of paternity or parentage, parental rights and responsibilities for children, child support, spousal support, counsel fees, and distribution of marital or nonmarital property.~~

**(a) Answer and Appearance.** ~~Except in emancipation actions, any party wishing to oppose any relief requested in any family matter complaint, petition, or motion must file an answer or response to the complaint, petition, or motion. If a party who fails to file an answer or response does, however, enter an appearance before the start of a hearing, that party may nonetheless be heard on issues of paternity or parentage, parental rights and responsibilities, child support, spousal support, counsel fees, and distribution of marital or nonmarital property.~~

(1) Required documents.

(A) A party responding to a complaint for divorce, establishment of parental rights and responsibilities, annulment, or judicial separation, or responding to a post-judgment motion in any of those actions must file an answer, using a court-approved form.

(B) If parental rights and responsibilities are being raised in the action, the person responding must file under oath the child-related information required by 19-A M.R.S. § 1753.

(C) A party who intends to oppose a de facto parentage complaint must file with the answer an affidavit addressing the factors of 19-A M.R.S. § 1891(3)(A)-(E) and must serve it on all parties to the proceeding.



\_\_\_\_\_ (D) A party who intends to oppose a petition for grandparent visitation rights must file with the answer an affidavit in response, serving all parties to the proceeding with a copy, as required by 19-A M.R.S. § 1803(2)(B).

(2) Timing.

(A) A party served with a complaint, petition, or post-judgment motion other than a motion to modify support filed pursuant to 19-A M.R.S. § 2009, must file an appearance and answer within 21 days after service unless the court directs otherwise.

(B) Responses to motions to modify support filed pursuant to 19-A M.R.S. § 2009 must be filed within 30 days after service, unless the court directs otherwise.

(C) Any party served with a counterclaim or a cross-claim must serve an answer within 21 days after service on that party.

(D) The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a).

(E) When the court schedules a hearing on any matter before the 21-day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition, or motion.

**(b) Counterclaims and Cross-claims.** A No grandparent visitation or emancipation action may ~~not~~ be asserted as a counterclaim or cross-claim, and no counterclaims or cross-claims may be asserted in those actions. ~~Any other~~ Only Family Division actions that could be brought pursuant to this chapter, including ~~an~~ actions allowable by Rule 111, ~~can~~ may be asserted as a counterclaim and cross-claim. ~~Except for an action that could be filed as a Family Division action pursuant to this chapter, no counterclaim shall be permitted in any action pursuant to this chapter.~~ counterclaims or cross-claims. Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

**Advisory Note - \_\_\_\_\_ 2019**

The amendments reflect an attempt to make the rule more readable, and include changes necessitated by the court's implementation of electronic filing and case management systems. In addition, throughout these rules, wherever the intent is to indicate that a litigant has a legal obligation to do something, "shall" has been changed to "must."

In addition, the Rule deletes the redundant reference to no answers being required in de facto parent and grandparent visitation actions. The "catch-all" provision in subsection (a) already allows a party who does not file an answer to nonetheless file an appearance and be heard on issues relating to parental rights and responsibilities.

7. Rule 107 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 107. ORDERS BEFORE JUDGMENT**

**(a) Motions for orders before judgment.** At any time before judgment in any action under this chapter in which the court has personal jurisdiction over the parties, the court may order the following:

(1) parental rights and responsibilities for any minor children, including health insurance and child support;

(2) appointment and payment of a guardian ad litem;

(3) participation in a parental education program (at the request of either party, or on the court's own motion);

(4) genetic or other testing;

(5) psychological or other evaluations;

(6) investigation by the Department of Health and Human Services pursuant to 19-A M.R.S. § 905;

(7) possession of owned or rented real and personal property pending the final judgment;

(8) payment of debts and obligations;

(9) sale of any property of the parties, along with the disposition of the proceeds;

(10) interim spousal support;

(11) a job search;

(12) payment by either party to the other or to the party's attorney of sufficient money for costs and counsel fees for the defense or prosecution of any action or any motion under this chapter. Execution for counsel fees shall not issue until after entry of final judgment;

(13) prohibition of either party from imposing any restraint on the personal liberty of the other;

(14) enforcement of compliance with the court's orders by appropriate process as the court can order in other actions; and

(15) dissolution or modification of a preliminary injunction or an attachment or trustee process.

No orders before judgment may be entered without notice to the parties or upon motion. The motion shall be accompanied by a draft order granting the relief requested.

In any action under this chapter in which the court lacks personal jurisdiction over the defendant, the court may at any time before judgment, and governed by the same notice provisions, enter any of the foregoing orders that it deems proper that do not involve the payment of, or the allocation of responsibility for the payment of, money.

**(b) Hearings on Motions for Interim Orders/Orders before Judgment.** All motions for interim orders or orders before judgment must include a list of witnesses, an estimate of time needed for the presentation of evidence, and a draft order specifying the relief being requested. After review of the motion and any opposition filed, the court may:

(1) Schedule a hearing of no longer than three hours; or

(2) Require the parties to engage in mediation before setting a hearing in those cases where mediation can be mandated, unless the requested interim hearing is for child support only.

Absent extraordinary circumstances, the court shall not hold more than one interim hearing during any stage of a case.

**(c) Expedited Hearings.** A party, or a guardian ad litem, may request that a hearing on a motion be expedited. The request must be filed on the court-approved Request for Expedited Hearing form. Such requests shall be in the form of a motion for expedited hearing and shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing. The request for an expedited hearing shall be considered in light of all relevant factors, including:

(1) the court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;

(2) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interest or financial support of a child or the parental rights of a party;

(3) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;

(4) the likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue present in the case;

(5) any unreasonable delay on the part of the moving party in filing the motion;

(6) any conduct on the part of either party impairing a fair and just resolution of the issues.

The moving party must determine and report to the court whether any other party objects to the requested relief and the motion for expedited hearing. The motion shall contain a notice stating the time for a response to the motion. Responses to a motion for expedited hearing shall be filed in writing within 7 days of the notice of the motion.

The court may rule on a motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable and good faith effort to notify the other parties or if delay would defeat the purposes of the motion. No ruling granting substantive relief shall be made without notice and opportunity to be heard.

All expedited hearings shall be limited to no more than three hours.

### **Advisory Note – \_\_\_\_ 2019**

Rule 107(b) is amended to limit the number of interim hearings at any stage of a case.

8. Rule 108 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 108. CHILD SUPPORT AFFIDAVITS AND WORKSHEETS, FINANCIAL STATEMENTS, AND REAL ESTATE CERTIFICATES**

##### **(a) Child Support Affidavits.**

(1) In any proceeding under this chapter in which child support is an issue, the parties ~~must~~ shall exchange and file child support affidavits. Except for actions initiated by the Department of Health and Human Services, the party initiating the action shall serve and file a completed child support affidavit with the complaint, petition or motion. The responding party must ~~shall~~ file a completed child support affidavit with the response or appearance. If no responsive pleading is required, the responding party must ~~shall~~ file a completed child support affidavit no later than 21 days after the responding party is served with the complaint, petition, or motion.

(2) If the Department of Health and Human Services seeks to initiate or modify a support order and is unable to secure the affidavit of a custodial

parent who is in receipt of public assistance, the Department may submit an affidavit based upon its information and belief regarding the custodial parent's income.

**(b) Child Support Worksheets.** In any proceeding under this chapter in which child support is an issue, the court may, at any time, order the parties to file child support worksheets.

**(c) Financial Statements.** In any divorce or judicial separation action in which there is a dispute about either a division of property or an award of spousal support or counsel fees, each of the parties must ~~shall~~ exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and nonmarital property. Each party must ~~shall~~ file his or her financial statement within 21 days after the issuance of the Family Division Scheduling Order or three business days before mediation, whichever is earlier.

**(d) Miscellaneous requirements.**

(1) *Forms for Filings.* Each party must file his or her financial statements, child support affidavit, and child support worksheet on court-approved forms that are published by the court.

(2) *Signature Under Oath.* Each party must sign his or her child support affidavit and financial statement under oath.

(3) *Privacy of Financial Statements and Child Support Affidavits.* The court shall keep each financial statement or child support affidavit filed separate from other papers in the case and shall not permit those documents to be available for public inspection. Those documents shall be available, as necessary, to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support.

(4) *Updated Statements.* The parties must ~~shall~~ update child support affidavits and financial statements 7 days before trial and file the updated statements with the court.

**(e) Real Estate Certificates.** In every divorce action in which any party has an interest in real estate, the parties must ~~shall~~ file with the court, at least 7 days before the hearing, the following information on the court-approved form: the book and page numbers of an instrument describing the real estate; the applicable Registry of Deeds; and the town, county and state where the real estate is located.

**(f) Sanctions.**

(1) If a party fails to file any child support affidavit, child support worksheet, financial statement, or real estate certificate required by these rules, the court may make such orders in regard to such failure as are just, including imposition of sanctions, as appropriate, including but not limited to sanctions set forth in Rule 37(b)(2). However, a magistrate may not impose any sanctions or penalties based upon a determination of contempt under Rule 66.

(2) Notwithstanding a party's failure to file a child support affidavit, the court shall enter a child support order within 63 days after the case management conference unless the parties demonstrate that the child(ren)'s needs are being met. If a party fails to file a child support affidavit without good cause, the court may take any of the following actions:

(A) Set that party's gross income in accordance with:

(i) The statutory minimum wage for a 40-hour work week;

(ii) Maine Department of Labor statistics;

(iii) An affidavit submitted by or testimony of the opposing party;

or

(iv) Information included in that party's most recent federal income tax return.

(B) Enter an order requiring that party to release all requested information to the court. Failure to comply with the order may result in a finding of contempt punishable by a fine or jail sentence.

(C) Award attorney fees.

**Advisory Note - \_\_\_\_ 2019**

The amendments reflect changes necessitated by the court's implementation of electronic filing and case management systems, and its adoption of form filings and pleadings. In addition, throughout these rules, wherever the intent is to indicate that a litigant has a legal obligation to do something, "shall" has been changed to "must."

9. Rule 110A of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 110A. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING MINOR CHILDREN**

**(a) Family Law Magistrates.** In all Family Division actions involving minor children, and subject to the Family Division Rules, ~~including all actions that have been transferred to the District Court from the Probate Court,~~ Family Law Magistrates shall have authority to:

- (1) hold case management conferences and other prehearing or pretrial conferences including judicial settlement conferences;
- (2) determine whether a party or counsel may attend a conference, mediation or hearing by telephone;
- (3) issue interim orders before judgment under Rule 107(a) and act on motions for expedited hearings under Rule 107(c);
- (4) issue final orders establishing or modifying child support;
- (5) order genetic testing; and
- (6) issue orders in child support enforcement actions.

In uncontested proceedings, magistrates may issue divorce judgments, paternity judgments, parentage judgments, judicial separation decrees, final orders establishing parental rights and responsibilities, ~~guardianship orders,~~



name-change orders, and orders on post-judgment motions modifying any such original orders.

In contested proceedings, with the consent of the parties, magistrates may hear and decide interim orders establishing parental rights and responsibilities. In contested proceedings under a pilot project established by the Chief Justice of the Supreme Judicial Court, a magistrate may hear and decide final divorce judgments.

When the parties are subject to a Protection from Abuse order, magistrates may amend the protection order to conform with the parental rights and responsibilities ~~portion of the protection order to conform with the~~ orders authorized above.

Nothing in these rules shall prohibit a judge from managing a case as provided in these rules.

**(b) Case Management.**

(1) *Case Management Conferences.* Whenever a complaint, petition or motion is filed in any proceeding involving minor children over which a magistrate has authority, the parties, and if represented their counsel, shall attend a case management conference with a magistrate or judge. At the initial conference and any subsequent conference the parties shall be prepared to address any issues in the case that may be raised by the court or the parties including, but not limited to: identification of any cases pending in other District Court locations or in a Probate Court; determination of whether there are any individuals who should be joined in, or served notice of, any action for parentage; any issues in dispute; the need for an interim order or orders under Rule 107(a); the scheduling of mediation; the scheduling of a prehearing conference; the scheduling of an uncontested hearing date; and any other matters pertinent to the case. Following the conference, the magistrate shall enter a case management order and other orders as appropriate.

In appropriate circumstances, a magistrate may dispense with a conference and set the matter promptly for hearing, may enter agreements on the record at the conference, may hold a hearing immediately following the conference, or may advise the parties that the matter will be referred to a judge.

(2) *Notice of Conference.* Except for motions to modify support filed pursuant to 19-A M.R.S. § 2009, the parties will be notified of the date and time of the case management conference within 14 days after the filing in court of the proof of service of the complaint, petition or motion. The conference will be held after the time for filing a response has passed. When a motion to modify support is filed pursuant to section 2009, the clerk will schedule a conference after receiving a response to the motion. If there is no response, a conference will not be scheduled, and the court will proceed in accordance with the provisions of section 2009.

(3) *Requests to Reschedule or Waive Conference or Mediation.*

(A) Rescheduling

(i) Continuanace. Requests to continue a conference ~~must~~ shall be in writing and may be granted for good cause shown pursuant to Rule 40(a). An agreement of the parties to continue, with an assurance by all parties that the children's needs are being met, constitutes good cause. Requests to continue mediation must proceed in accordance with Rule 92(b)(5)(G).

(ii) Deferral of Conference. Parties may request by letter, accompanied by the appropriate mediation fee, that the case management conference be deferred for up to 91 days and that they proceed directly to mediation pursuant to Rule 92(b). The letter must state that the parties or their counsel have conferred and that they agree that the children's needs are being met, there are no discovery disputes, there are no issues of domestic violence, financial statements will be filed with the court before mediation, and both parties join in the request. Each party or each party's attorney of record must sign the letter. The appropriate mediation fee must be paid to the court when mediation is requested. The conference shall be scheduled by the clerk for no later than 91 days after the deferral.

(B) Waiver of Conference. Instead of attending an initial case management conference following the filing of a complaint or petition, the parties may file a certificate stating that they have reached a temporary agreement on all issues relating to the children. The certificate must be signed by all parties or their attorneys, indicate what issues, if any, remain unresolved

in the case, and include a date for a status conference, mediation when mediation is required, including a date for payment of mediation fee, or a final hearing no later than 91 days after the date of the certificate. The parties are responsible for obtaining dates from the court. With the certificate, the parties must submit for the magistrate's review child support affidavits, worksheets, a written agreement on parental rights and responsibilities that addresses the children's residence, support or maintenance, and parent-child contact and, if an interim order is requested, a proposed order incorporating the terms of the agreement. The magistrate may require the parties to attend a case management conference if the agreement appears inequitable on its face, if the agreement provides for a deviation from the child support guidelines, if there has been a history of domestic abuse, or for any other reason. Upon receipt of a written statement by either party that the agreement is not being followed, the court will schedule a case management conference.

(4) *Interim Relief.*

(A) *Interim Orders Without Hearing.* At any stage in the proceedings, a magistrate may enter interim orders with the consent of the parties or when a party is in default. Whether or not the parties agree, a magistrate may enter a Family Division Scheduling Order. At their initial court appearance, the parties shall be advised of their right to have a judge determine interim parental rights and responsibilities. To exercise this right, a party must file a written request with the court clerk either before or at the time of the ~~their~~ initial court appearance. In the absence of such a written request, the parties' consent will be presumed, and a magistrate may determine interim parental rights and responsibilities.

(B) *Mediation.* When the parties cannot reach an interim agreement on all issues or if the court defers a conference at the request of the parties, mediation shall be promptly scheduled as provided in Rule 92(b). The magistrate may waive the required mediation for good cause shown. Mediation pursuant to Rule 92(b) may be waived when the parties agree to proceed with and pay for private mediation in place of mediation pursuant to Rule 92. An agreement reached through mediation shall be reviewed by the court. If approved, it may be entered as either an interim or final order.

(C) *Interim Orders After Hearing.* In cases where mediation is required and has occurred, but the parties have not reached an interim agreement, and

in cases where mediation is not required or ordered, the magistrate may conduct a hearing on the contested issues and enter an interim order. In no case shall the hearing be longer than three hours. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

Absent extraordinary circumstances, the court shall not hold more than one interim hearing during any stage of a case.

(5) *Proceedings After Entry of Interim Order.*

(A) Uncontested Proceedings. If there are no issues in dispute following the entry of an interim order, the case shall be scheduled for an uncontested final hearing ~~before the court.~~

(B) Contested Proceedings Where Mediation Is Required. When issues remain in dispute and mediation is required but has not been held on these issues, the case shall be referred to mediation as provided in Rule 92(b).

(i) If the issues are resolved by mediation, the case shall be scheduled for a final, uncontested hearing ~~before the court.~~

(ii) When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing unless the parties otherwise agree pursuant to Rule 114(b)(3).

(C) Contested Proceedings Where Mediation Is Not Required. When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a magistrate. When other issues are in dispute, a judge shall preside at the final hearing unless the parties otherwise agree pursuant to Rule 114(b)(3).

(6) *Post-Judgment Motions.* Each post-judgment motion must be accompanied by a summary motion, using the court-approved form. Clerks shall return any motions that are not so accompanied.

(A) Motions to Modify.

(i) The case management process stated in these rules shall be used for post-judgment motions to modify.

(ii) Uncontested Motions. Instead of attending a case management conference on a post-judgment motion, the parties may file a certificate stating that a hearing is not necessary because the motion is unopposed or the parties have reached an agreement. The certificate must be signed by both parties under oath, and be accompanied by a stipulated order. When the ~~proceeding~~ only pending motion is a motion to modify child support and the responding party does not request a hearing, the conference may be waived and the magistrate may enter an order pursuant to 19-A M.R.S. § 2009(6).

(B) Motions to Enforce. A motion to enforce a judgment or order shall be addressed in a timely fashion and shall be heard by a magistrate as part of a post-judgment docket. If the motion is not resolved at the post-judgment docket, the motion shall be referred to a judge who may refer the motion to mediation, or may refer the action for prompt scheduling of a hearing before a judicial officer. If the matter cannot be scheduled promptly on a post-judgment docket, the motion shall not be included in the case management process and shall be referred to a judge. Relief on a motion to enforce may include amendment of a judgment or order if such is necessary to achieve the purposes of the judgment or order.

(C) Contempt. Contempt proceedings shall be referred to a judge.

(7) *Effect of Case Management and Interim Orders.* A magistrate's case management and interim orders are effective when signed and remain effective until amended or until a final order is entered. A magistrate's order is enforceable as an order of the court and is entitled to full faith and credit. An interim order does not constitute the law of the case, and the issues may be decided de novo at the final hearing.

**Advisory Note - \_\_\_\_ 2019**

Most amendments reflect changes necessitated by the court's implementation of electronic filing and case management systems. In addition, there are some changes throughout the rule in an attempt to improve its readability and, throughout these rules, wherever the intent is to indicate that a litigant has a legal obligation to do something, "shall" has been changed to "must."

Rule 110A is also amended to limit the number of interim hearings at any stage of a case, and to reflect that, although the Home Court Act granted jurisdiction over guardianships, adoptions, and name changes to the District Court generally, 4 M.R.S. § 183(D) does not specifically grant Family Law magistrates authority to hear those actions.

10. Rule 111 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 111. JOINDER, CONSOLIDATION AND INTERVENTION**

##### **(a) Joinder.**

(1) *Joinder of Claims and Remedies.* ~~Grandparent visitation and emancipation actions shall not be joined with other Family Division actions. Any other claim, counterclaim or request for relief that could be brought as a separate Family Division action may be joined to an action under these rules. With the exception of grandparent visitation and emancipation actions, a court may, at any time, join any claims, counterclaims, or requests for relief that could be brought as separate Family Division actions to another Family Division actions. A court may approve joinder of grandparent visitation or emancipation actions with other Family Division actions only when:~~

(A) all parties have agreed to the joinder; or

(B) the other Family Division action is a claim of de facto parent status pursuant to 19-A M.R.S. § 1891.

In granting a request for joinder, a court may order joint hearings or trials of any or all matters, it may order consolidation of the actions, and it shall attempt to ensure that the joined proceedings avoid delay or unnecessary costs.

(2) *Joinder of Persons or Entities.* The only persons who may be joined as parties to an action under these rules are persons or entities specifically authorized to file or participate in a Family Division action by Title 19-A of the Maine Revised Statutes. ~~However, persons who file emancipation or grandparents' visitation actions may not be joined.~~ Persons who have filed emancipation or grandparent visitation actions may not be joined to an action that involves the child(ren) at issue in the emancipation or grandparent visitation action.

**(b) Consolidation.** Rule 42 governs consolidation in Family Division matters.

**(c) Intervention.** A person may petition to intervene in a Family Division action only when that intervention is specifically authorized by statute, or when the individual or entity would be authorized to file a complaint or post-judgment motion involving one or more of the same parties and issues that are being addressed in the Family Division action in which the person is seeking to intervene. ~~A No person asserting a claim for parentage or de facto parentage may not intervene in a pending divorce or parental rights and responsibilities case, but.~~ In order to assert such claims that person must file and serve a separate petition for parentage and parental rights and responsibilities. Where intervention is authorized, practice regarding intervention is governed by Rule 24.

### **Advisory Note - \_\_\_\_ 2019**

Rule 111(a) has been substantially rewritten to allow for consolidation of grandparent visitation and emancipation actions with other Family Division actions when the parties agree or when the “other” action is an action to establish de facto parentage. In addition, the rule is amended to improve its readability. Finally, throughout these rules, wherever the intent is to indicate that a litigant has a legal obligation to do something, “shall” has been changed to “must.”

11. Rule 112 of the Maine Rules of Civil Procedure is amended to read as follows:

### **RULE 112. DISCOVERY**

**(a) Discovery Limitations.**

(1) In any proceeding under this chapter, a party may obtain discovery on issues of spousal and child support, counsel and guardian ad litem fees, and disposition of property and debt as in any other civil actions. ~~However, when~~ When financial statements are required under Rule 108(c), however, discovery may be initiated only after the parties have filed and exchanged the financial statements. If the exchange does not occur, the party who has filed a financial statement may serve discovery after the time period has expired as provided in Rule 108(c).

(2) On other issues, including parental rights and responsibilities, discovery may be served only by order of the court for good cause shown.

**(b) Financial Statements.** In any Family Division matter, upon motion of a party or its own motion, the court may order the parties to file and exchange financial statements or child support affidavits when the filing of these documents is not required under Rule 108. The court may also order the supplementation of financial statements or child support affidavits.

**(c) Discovery Procedure.** Where discovery occurs, discovery practice shall be governed by Rules 26 through 37. If a party fails to comply with discovery, compliance with discovery may be enforced by a judge or magistrate. A magistrate may impose sanctions for failure to comply with discovery, including but not limited to those set forth in Rule 37, but excluding any sanctions or penalties based upon a determination of contempt under Rule 66.

**Advisory Note - \_\_\_\_ 2019**

Rule 112 is amended to improve its readability.

12. Rule 114 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 114. TRIAL**

**(a) Trial Process.** A judge, or a magistrate where authorized, shall preside over the trials of all issues presented for decision in accordance with this chapter and the child support guidelines. The Maine Rules of Evidence shall



govern trials, except that where a witness is presented as an expert on any issue, the court may, in its discretion, allow or require that a written report of the expert be offered in lieu of all or a portion of that individual's direct testimony. However, the expert must be available for cross-examination and questioning by the court and for any redirect examination on issues that are fairly raised in the cross-examination or questioning by the court. The proponent of the report shall request a prehearing conference before the trial to address all issues surrounding use of the expert's report, when the court has not previously addressed those issues.

**(b) Final Orders by Family Law Magistrates.**

(1) *Child Support.* A magistrate may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

(2) *Other Matters.* A magistrate may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A magistrate may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a magistrate may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

(3) *Final Contested Matters.* When all parties consent, a magistrate is authorized to hear and to dispose of all elements of a Family Division matter, except adoptions, provided that the ~~M~~magistrate determines that it is reasonably likely that the hearing can be completed within 3 hours.

**Advisory Note - \_\_\_\_ 2019**

The amendment corrects a typographical error.

13. Rule 115 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 115. NO JUDGMENT WITHOUT HEARING; JUDGMENTS TO BE FINAL**

**(a) Hearing.** Unless otherwise provided by these rules, no final judgment, other than a dismissal for want of prosecution, shall be entered in an

original action under these rules except after hearing, which may be *ex parte* if a party does not appear. With the permission of the court, a party may appear at a hearing by telephone or by video-conference.

**(b) Finality.** Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, judicial separation, disposition of property, or other disposition, award, or division of property incident to a divorce, annulment, judicial separation or any order relating to paternity, parentage, parental rights and responsibilities including child support, emancipation, guardianship of a minor, name change, adoption, and visitation rights of grandparents, other than a temporary or interim order under these rules, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

### Advisory Note – \_\_\_\_ 2019

The amendment adds case types to reflect the expanded jurisdiction of the District Court 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.

14. Rule 117 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 117. DEFAULT**

**(a) Matters Other than Those Requesting Only Child Support Modifications.** For all actions other than ~~those requesting only child support modifications.~~ Except for motions filed requesting only a modification in child support pursuant to 19-A M.R.S. § 2009(6), Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard ~~before entry of judgment.~~

**(b) ~~Child support modification~~ Support Modification.** When a party has filed a motion seeking only the modification of child support and has

attached a proposed order, if the other party does not request a hearing within 30 days after service of the motion, the court may, without holding a hearing, enter an order granting the relief requested using the proposed order, so long as the resulting support obligation is equal to or greater than the obligation resulting from the application of 19-A M.R.S. § 2005.

### **Advisory Note - \_\_\_\_ 2019**

The amendments correct typographical errors and attempt to improve the rule's readability.

15. Rule 118 of the Maine Rules of Civil Procedure is amended to read as follows:

#### **RULE 118. FINAL ORDERS OF FAMILY LAW MAGISTRATES; JUDICIAL REVIEW**

**(a) Objection and Review.** Any party who wishes to appeal a Family Law Magistrate's final judgment or order shall file an objection in the District Court within ~~24~~ 14 days after the entry of the magistrate's final judgment or order. If no objection is filed, the parties are deemed to have waived their right to object and to appeal, and the magistrate's final judgment or order shall become the judgment of the court and have the same effect as any final judgment signed by a District Court judge.

(1) The objection must specifically state the grounds alleged for rejecting or modifying the judgment or order. If a party fails to comply with these requirements, the objection may be dismissed with prejudice. An objection shall not be dismissed solely because it is erroneously captioned as a "motion," "appeal," "notice of appeal" or some other form of pleading.

(2) If an objection is filed, any party who wishes to reply to the objection must do so within 7 days after the filing of the objection.

(3) When an objection is filed, a judge shall review the record established before the magistrate with or without a hearing and may adopt, modify or reject the order, set the matter for further hearing before a judge or magistrate or recommit the matter to the magistrate with instructions.

~~(3)~~ (4) A magistrate's final order addressing parental rights and responsibilities, residency, and support of minor children or the separate support or personal liberty of a person is effective when signed and remains in effect until modified or rejected by a judge.

(4) (5) Every written final order of a magistrate shall state the parties' right to object to the magistrate's final order and the consequences if the parties fail to object.

**(b) Appeals.** An appeal from a judgment entered after objection to a final judgment or order of a magistrate shall be taken in accordance with the Maine Rules of Appellate Procedure. No appeal may be taken from a final judgment or order of a magistrate as to which no timely objection was filed pursuant to subdivision (a).

**(c) Waiver of Rights.** The parties may waive their right to object and request immediate confirmation of a the magistrate's final order. ~~They may also waive their rights to appeal.~~ In doing so, the parties will also have waived their rights to appeal that final order to the Law Court.

### **Advisory Note - \_\_\_\_ 2019**

The amendment establishes a process for one party to respond to another party's objection to the order of a magistrate, and decreases the time during which objections may be filed to allow for the reply. Additionally, the rule now clearly indicates that, by waiving the opportunity to object to a magistrate's order, the order becomes final, and the parties are waiving their right to appeal the final order to the Law Court.

16. Rule 120 of the Maine Rules of Civil Procedure is amended to read as follows:

### **RULE 120. POST-JUDGMENT RELIEF**

(a) Except as otherwise provided in Title 19-A, any ~~proceedings requests~~ for modification or enforcement of a final judgment in an action under this chapter shall be ~~on~~ initiated by the filing of a motion for post-judgment relief. The motion shall be served in accordance with Rule 103 and, where required by Rule 101, filed with the summary motion document required by that rule. A

motion made in response to a motion filed by a party represented by an attorney may be served upon the attorney in accordance with Rule 5.

A motion, any response, and any opposing motion or memorandum shall be accompanied, as appropriate, by the child support affidavits if required by Rule 108.

A motion for contempt may also be brought pursuant to Rule 66. After a hearing on a motion for contempt and a finding of contempt, in addition to other relief, a court may determine that an order amending a judgment or order is necessary to achieve the purposes of the judgment or order that is the subject of the motion for contempt.

Post-judgment motions filed in an action under this chapter must be accompanied by a properly completed court-approved Summary Sheet form, which is available from the clerk.

(b) The court shall hold a hearing on a motion for post-judgment relief, unless (1) the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary, or (2) there is no timely request for a hearing on a motion to modify child support and entry of an order without hearing is authorized by 19-A M.R.S. § 2009(6).

(c) Upon motion of a party made within ~~5~~ 7 days after the ~~notice statement of a the post-judgment decision under these rules in open court, or the entry of the decision or judgment on the docket, whichever comes first,~~ or upon the court's own motion, the justice or judge who has entered an order on a motion for post-judgment relief shall make findings of fact and conclusions of law in accordance with Rule 52.

### **Advisory Note – \_\_\_\_ 2019**

Rule 120(a) was amended to clarify its meaning and to add the requirement of the filing of a summary motion. Rule 120(c) was amended to establish a more definite deadline for the filing of motions for findings, and to make that deadline a multiple of 7.

17. Rule 127 of the Maine Rules of Civil Procedure is amended to read as follows:

## **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.

**(c) Recording of Proceedings.** Recording of PFA proceedings, other than the official recording by the court, is prohibited. Persons who obtain an official court recording of the proceedings are prohibited from posting the recording, or any portion thereof, on the internet. Anyone who violates this rule may be found in contempt, and the court may impose any sanctions or penalties allowed by law.

**(d) Cellular and Electronic Devices.** Unless the court gives specific permission, possession or use of the following are prohibited in a courtroom during PFA proceedings: cellular phones and smartphones, cameras, video cameras, recording equipment, dictaphones, pagers, personal digital assistants, and computers and tablets.

## **Advisory Note - \_\_\_\_ 2019**

The additions of subsections (c) and (d) to Rule 127 are intended to ensure that the court system is in compliance with 19 U.S.C. § 2265(d)(3), which states:

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction [, restraining order, or injunction] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.