

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENTS TO
MAINE RULES OF CIVIL PROCEDURE

1. 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) Authority of Family Law Magistrates in Cases Involving Minor Children. In all Family Division actions involving minor children, ~~and subject to the Family Division Rules,~~ including all guardianship actions that have been transferred from the Probate Court to or filed in the District Court from the Probate Court because a divorce, paternity, family matter, protection from abuse, or name change proceeding involving the minor child named in the guardianship is pending in the District Court, Family Law Magistrates shall have concurrent authority with District Court judges to

(1) hold case management conferences and other prehearing or pretrial conferences including judicial settlement conferences;

(2) ~~determine~~ decide whether a party or counsel may attend a conference, mediation, or hearing by telephone;

(3) issue interim orders before judgment under Rule 107(a), unless the parties request that the interim issues be heard before a judge pursuant to Rule 110A(b)(4)(A) and act on motions for expedited hearings under Rule 107(c);

(4) issue final orders establishing or modifying child support, as delineated in Rule 114(b)(1);

(5) order genetic testing; ~~and~~

~~(6) issue orders in child support enforcement actions.~~

(6) decide child support enforcement and post-judgment motions as delineated in Rule 110A(b)(6);

~~(7) 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~~ issue final judgments or orders in uncontested proceedings involving minor children, and orders on post-judgment motions modifying any such original orders, as delineated in Rule 114(b)(2);

(8) issue final judgments and orders in contested proceedings involving minor children, as delineated in Rule 114(b)(3);

(9) review and approve or reject settlement agreements of matters involving minor children; and

(10) amend the parental rights and responsibilities and parent-child contact provisions of an Order for Protection from Abuse to conform with the judgments, decrees, and orders authorized above.

~~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 parental rights and responsibilities portion of the protection order to conform with the orders authorized above.~~

A magistrate's order is enforceable as an order of the court and is entitled to full faith and credit. Nothing in these rules shall prohibit a judge from managing a case as provided in these rules involving children and, wherever "court" is used in this Rule, the word includes both magistrates and judges.

(b) Case Management for Cases Involving Minor Children.

(1) *Case Management Conferences.* Whenever a complaint, petition, or motion is filed in any proceeding involving minor children ~~over which a~~

~~magistrate has authority~~ except an emancipation action, the parties, and, if represented, their respective counsel, shall attend a case management conference ~~with a magistrate or judge~~. At the initial conference and any ~~subsequent~~ later 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 or guardianship; any issues in dispute; the need for an interim order or orders under Rule 107(a); a prehearing conference; an uncontested hearing date; and any other matters pertinent to the case. Following the conference, the ~~magistrate~~ court shall enter a case management order and other orders as appropriate.

In appropriate circumstances, ~~a magistrate~~ the court may dispense with a conference and set the matter promptly for hearing, may enter agreements on the record at the conference, or may hold a hearing immediately following the conference. A magistrate ~~, or~~ may also 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 in Cases Involving Minor Children*.

(A) *Rescheduling*.

(i) *Continuance*. Requests to continue a conference 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~~ court'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~~ court 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 in Cases Involving Minor Children.*

~~(A) *Interim Orders Without Hearing Presumption of Consent.* 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 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. Regardless of the parties' agreement, a magistrate may enter a Family Division Scheduling Order.~~

~~(B) *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.~~

~~(BC) *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 court 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.~~

~~(CD) *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. In no case shall the interim hearing, either by a magistrate or a judge be longer than three hours.~~

~~(E) *Effect of Interim Orders.* An interim order does not constitute the law of the case, and the issues may be decided de novo at the final hearing.~~

(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 in Cases Involving Minor Children.*

(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~~ all parties under oath, and be accompanied by a stipulated order. When the proceeding 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~~. If the motion to enforce does not involve any children's issues, the motion shall be scheduled before a judge. If the motion to enforce involves children's issues, either alone or in addition to other issues, the motion shall be heard by scheduled before a magistrate as part of on a post-judgment docket. If the only contested issue is child support, the magistrate shall conduct a final hearing at the first available opportunity. 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. involves issues other than, or in addition to, child support and the magistrate is unable to enter a final order on all issues, pursuant to Rule 110(a), at the time of conducting the post-judgment docket, or, if appropriate, following mediation, the Magistrate shall schedule the case for final hearing before 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. In any case where a motion for contempt and any other post-judgment motion is pending, hearings on the pending motions shall be scheduled at the same time, unless such scheduling would cause significant prejudice to one of the parties or cause undue delay in the resolution of one of the motions.

(7) *Effect of Case Management and Interim Orders*. A magistrate's Unless otherwise ordered, 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 – September 2016

The phrase “PREHEARING SCHEDULE” was deleted from the title of the Rule because the Rule does not establish a schedule. The addition of the phrase “involving minor children” to captions throughout the Rule are intended to emphasize that Rule 110A applies only to cases involving minor children.

The changes made to Rule 110A(a) accomplish several things. First, an unnecessary reference to the “Family Division Rules” was removed, because Civil Rules 100 to 127 comprise the Family Division Rules. Second, all of the tasks Family Law Magistrates are authorized to do, either through 4 M.R.S. § 183, or through the ---- , 2016 Standing Order Concerning Assignment of Actions to Family Law Magistrates, are now here, rather than spread throughout the Family Division Rules. References to specific rules clarifying the magistrates’ authority are included.

Third, formatting changes were made to increase its readability and to allow for easier cites to the Rule. Fourth, the language about the enforceability of a magistrate’s orders was moved to Rule 110A(a) from Rule 110A(b)(7). Finally, the Rule now reflects the reality that judges sometimes provide case management for some Family Division cases. Hence, throughout the Rule, “magistrate” has been changed to “court” when either a magistrate or a judge may perform the task.

Changes were made to Rule 110A(b)(1) because the magistrates’ authority is now listed in 110A(a), and to continue with the change in this Rule from “magistrate” to “court” whenever magistrates and judges have concurrent jurisdiction.

A serial comma was added in Rule 110(b)(2) for clarity.

The change in Rule 110A(b)(3)(B) reflects an area where magistrates and judges have concurrent jurisdiction.

Several changes were made to Rule 110A(b)(4) to accomplish two goals. First, changes were made to subsections (b)(4)(A) and (B) to highlight the presumption that magistrates will handle all interim hearings in cases involving children. Second, the reference in former subsection (b)(4)(C)—

now subsection (b)(4)(D)—to the limitation on the length of interim hearings was moved to clarify that the limitation applies to hearings heard by both magistrates and judges. In addition, a change was made to reflect the concurrent jurisdiction of magistrates and judges. A new subsection (b)(4)(E) has been added to describe the effect of interim orders.

The change to Rule 110A(b)(6)(A) was made to reflect the fact that some cases will involve more than two parties.

The changes to Rule 110A(b)(6)(B) were made to clarify the process to be used by magistrates and judges when handling motions to enforce as part of a post-judgment docket.

Rule 110A(b)(6)(C) was changed in order to encourage the scheduling of a single hearing for all motions pending in the same case.

The language of Rule 110A(b)(7) was changed to make it clear that, generally, all case management and interim orders are effective when signed. The reference to the effect of interim orders in general is deleted because that language has been added to Rule 110A(b)(4). *See* Rule 110A(b)(4)(D).

2. 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 Final Uncontested Matters Involving Children.*~~ A magistrate may enter final judgments or orders when all issues in a parental rights and responsibilities proceeding, a divorce proceeding with children, a name-change proceeding, or a guardianship proceeding that is linked to one of these proceedings, including any actions to modify or enforce judgments issued in such proceedings, are uncontested. 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 Involving Children.*~~ When all parties consent, a A magistrate is authorized to hear and to dispose of all elements of a ~~Family Division matter~~ parental rights and responsibilities proceeding, a divorce proceeding with children, a name-change proceeding, or a guardianship proceeding that is linked to any of these types of proceedings, including any actions to modify or enforce judgments issued in such proceedings, provided all of the following conditions are met:

(A) All parties consent to the magistrate hearing the case;

(B) The remaining issues in dispute involve children’s issues and at least one of those issues involves child support; and

(C) The magistrate determines that the contested hearing can be completed within 3 hours and can be accommodated within the magistrate’s schedule.

Advisory Note – September 2016

Rule 114(b)(2) was amended and a new (b)(3) was created to reflect the _____ 2016 Standing Order in which the Chief Judge of the District Court granted permission to Family Law Magistrates to hear all uncontested cases

involving minor children and to hear contested final hearings in certain cases under certain circumstances.

The provision of former Rule 114(b)(2), which referred to settlement agreements, was moved to Rule 110A(a)(9).

3. Rule 118(a) 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. Motions filed pursuant to Rule 52(b) and Rule 59(e) are not available to parties seeking relief from the final order or judgment of a Family Law Magistrate. Any party who wishes to challenge or appeal a Family Law Magistrate’s final judgment or order shall file an objection in the District Court within 21 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.

....

Advisory Note – September 2016

Rule 118(a) was amended to reflect the Law Court’s decision in *Dietrich v. Dietrich*, 2016 ME 130, ¶¶ 10-12, -- A.3d --, which clarified that parties may not file motions pursuant to M.R. Civ. P. 52(b) or 59(e) with Family Law Magistrates. Rule 118(a)(1) already indicates that, should such motions be filed in error, they are to be considered as “objections,” and should result in a judge’s review of the magistrate’s order.