

FAMILY DIVISION TASK FORCE – 2013  
(FDTF)



Final Report to the Justices  
of the  
Maine Supreme Judicial  
Court

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## PREAMBLE

The members of the Family Division Task Force (FDTF) are pleased to submit this Report to the Justices of the Maine Supreme Judicial Court for consideration. The substance of this Report represents the final product of an intensive and concentrated review of the current family matters process. The observations and recommendations in this Report are made in the context of the continuing evolution of the Family Division. The Task Force is proud to concur with the 2006 Family Division Task Force's conclusion that the Family Division has been tasked with the prompt and compassionate delivery of justice to Maine children and families and has performed its duties admirably. The FDTF members acknowledge the excellent efforts of the Family Division, District Court Judges and Family Law Magistrates.

The review process that culminated in this Report could not have been completed without the dedicated efforts of many individuals. The FDTF members recognize the Office of Information and Technology, the Office of Data Collection and Analysis, the Access to Justice Coordinator, Pine Tree Legal Assistance as well as all attorneys, members of the public and other stakeholders that participated in the review process and public comment opportunities. Their efforts, together with those of the FDTF members, were crucial to the production of this Report.

Respectfully submitted,

The Family Division Task Force

Hon. Daniel Driscoll, Chair

Tracie Adamson, Esq.  
Diana Durgin  
Diane Dusini, Esq.  
Richard W. Elliott, Esq.  
Hon. A. Mark Horton  
Hon. Bruce Jordan  
Senator Roger J. Katz, Esq.  
Hon. Jon D. Levy, Associate Justice

Gail Merritt  
Representative Kimberly Monaghan-Derrig  
Barbara L. Raimondi, Esq.  
Anthony A. Trask, Esq.  
Debby L. Willis, AAG  
Magistrate Maria Woodman  
Bonita Usher  
Honorable Warren Silver, Associate Justice

## I. INTRODUCTION AND STATEMENT OF PURPOSE

The purpose of establishing the Family Division Task Force—2013 is twofold<sup>1</sup>: first, to review and update the status of changes recommended by the Family Division Task Force—2006 Report; second, to make recommendations to the Chief Judge of the District Court and the Maine Supreme Judicial Court regarding any changes to procedures, law, or rules necessary to advance the Family Division’s mission. Toward this end, the Task Force:

- A. Reviewed the Family Division Task Force—2006 Report, and evaluated the progress towards implementation of any recommendations;
- B. Solicited and received the input from the public, the Bar, and additional Stakeholders;
- C. Studied and made the incorporated recommendations regarding the timing, scheduling, and processing of family matters in the District Courts;
- D. Studied and made the incorporated recommendations regarding the scheduling and management of family matters as those activities relate to the scheduling and management of other case types;
- E. Studied and made the incorporated recommendations for improving the allocation of resources and/or the management of family matters;
- F. Studied and made the incorporated recommendations regarding statistical information compiled by the Family Division; and
- G. Examined such other related topics as were identified by the Task Force.

The overarching goal of the Task Force was to review the processing of family matter cases in Maine, and to recommend any changes that will best serve the needs of children and families. This included recommendations that would: eliminate magistrate or judicial events that create unnecessary costs or delays, create different or improved procedures that promote prompt and effective resolution of disputes, and allow for better allocation of magistrate and judicial resources.

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<sup>1</sup> See Charter at [Appendix A, p. A1](#).

## **II. FAMILY DIVISION OVERVIEW**

In 1997, the Maine Legislature passed enabling legislation creating the Family Division of the Maine District Court. P.L. 1997, c. 269 § 1. The stated purpose of the Family Division is to “provide a system of justice that is responsive to the needs of families and the support of their children.” 4 M.R.S. § 183. To help the District Court respond to the needs of families, the Legislature authorized the creation of judicial officers of limited jurisdiction, called Family Law Magistrates (Magistrates). 4 M.R.S. § 183(1). The legislation identified case management, education for the parties, and alternative dispute resolution (mediation) as important tools in Family Division proceedings. 4 M.R.S. § 183. It authorized the Maine Supreme Judicial Court to promulgate rules and orders governing the practice, procedure, and administration of the Family Division. 4 M.R.S. § 183.

### **A. Statutory Authority**

Title 4 Section 183 of the Maine Revised Statutes outlines the parameters of the Family Division, defines the jurisdiction of Family Law Magistrates, authorizes the Maine Supreme Judicial Court to adopt rules governing the practice, procedure and administration of the Family Division, directs the State Court Administrator to provide staffing, within available funding, and requires statistical reporting to the Legislature and Supreme Judicial Court in odd-numbered calendar years.

### **B. Operational Rules**

The Maine Supreme Judicial Court adopted distinct Rules for the Family Division of the Maine District Court, Effective April 6, 1998. On January 1, 2009, the Court abrogated those rules and in their place adopted rules for the Family Division as part of the Maine Rules of Civil Procedure. See M.R. Civ. P. Chapter XIII. The current rules outline the procedures to be followed in domestic relations proceedings (Family Matters), authorize Family Law Magistrates to handle cases involving children (e.g., child support, divorce with children, paternity, parental rights & responsibilities), and establish a process for managing cases and addressing child support in accordance with the Child Support Guidelines. M.R. Civ. P. 110A. See also, Family Law Magistrate Authority, Me. Admin. Order JB-05-18 (effective Aug. 1, 2005)

### **C. Roles and Responsibility of Judicial Officers**

#### **1. Role of Judges**

District Court Judges may preside over all Family Matters cases. 4 M.R.S. § 152 (11); see also M.R. Civ. P. 110A(a).

In particular, judges may:

- Conduct proceedings in all family matters cases whether or not the parties have minor children;
- Conduct all proceedings in divorce cases not involving minor children;

- Preside at contested final hearings involving minor children when there are issues in dispute other than child support;
- Hear and decide contempt motions in all case types;
- Manage all post-judgment motions to enforce as well as hear and decide all motions to enforce when there are issues other than child support;
- Hear all post-judgment motions, other than those solely related to child support; and
- Preside over all cases that a Magistrate is authorized to hear.

4 M.R.S. § 152(11); see also M.R. Civ. P. 110A, 110B & 120.

## **2. Role of Family Law Magistrates**

Family Law Magistrates are judicial officers of limited jurisdiction. They have the authority to:

- Conduct case management conferences and issue case management orders;
- Enter interim orders relating to the care and support of children when the parties are in agreement;
- Preside at contested interim hearings in actions involving establishment, modification or enforcement of child support;
- Preside at contested hearings concerning interim parental rights and responsibilities, if both parties consent;
- Modify the parental rights provisions of a protection from abuse order to conform to an order entered in a Family Matters proceeding;
- Conduct status or pretrial conferences;
- Enter a default or default judgment;
- Preside at final, uncontested hearings and enter a judgment or order;
- Preside at final, contested hearings when child support is the only contested issue and enter a judgment or order;
- Enter post-judgment orders by agreement of the parties; and
- Preside at and enter final orders in contested post-judgment proceedings when child support is the only contested issue.

4 M.R.S. § 183(1)(D)-(F); M.R. Civ. P. 110A; JB-05-18.

Family Law Magistrates may not:

- Conduct proceedings in divorce actions without minor children;
- Hear and decide contempt motions;
- Hear and decide post-judgment motions to enforce when there are issues other than child support; or
- Preside at contested final hearings when there are issues other than child support, even by agreement of the parties.

4 M.R.S. § 183(1)(D)-(F); M.R. Civ. P. 110A; JB-05-18.



### III. THE REVIEW PROCESS

The Maine Supreme Judicial Court chartered the Family Division Task Force—2013 in July of 2013, for the purposes of reviewing and updating the status of changes recommended in the Family Division Task Force—2006 Report as well as to make recommendations to the Chief Judge of the District Court and the Maine Supreme Judicial Court regarding any changes to procedures, law, or rules necessary to advance the Family Division’s mission. Family Division Task Force Charter, Maine Supreme Judicial Court.<sup>2</sup>

The Family Division was created to “provide a system of justice that is responsive to the needs of families and the support of their children.” 4 M.R.S. § 183 (2013). The Task Force, mindful of the goals of the Family Division in its mission, was guided by these goals in its review of family matters case processing. In other words, the Task Force examined each point of process and procedure to determine whether the process or procedure has been successful in achieving the Family Division’s goals.

The Task Force concluded that the following objectives are particularly relevant to the evaluation of the current family matters case process: the timely resolution of family cases, efficient case management, scheduling practices that do not burden litigants with unnecessary court appearances or costs, the promotion of a better understanding of court processes, the facilitation of parenting arrangements in the best interest of children and the establishment of child support at an early stage in the proceedings. See Advisory Note to M.R. Civ. P. 101. The Task Force approached its review with the strategy of enhancing the family case management process to better achieve these goals.

The Task Force began its work by reviewing the Family Division Task Force—2006 Report and the progress that has been made towards implementation of any recommendations. When considering the advisability of implementing recommendations not heretofore adopted by the Supreme Judicial Court, the Task Force was mindful that the Supreme Court promulgated amendments to the Maine Rules of Civil Procedure that abrogated and replaced the former Family Division Rules, effective January 1, 2009. See M.R. Civ. P. 100 et seq.

The Family Division provided the Task Force with data from all District Courts throughout the State, which data included the Family Division’s annual caseload, identifying pre- and post-judgment proceedings. The Family Division also provided the Task Force with a detailed data summary of key case events, average time to resolution, attorney representation and other considerations in pre-judgment (original) actions with children.<sup>3</sup> The Task Force also obtained information regarding the scheduling practices of all of the courts.

The Task Force reviewed relevant statutes, Rules of Procedure, Rules of Evidence, Judicial Canons, Administrative Orders and court forms to assess their impact on the family matters process and whether any changes were necessary to better support the Family Division mission

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<sup>2</sup> See [Appendix A, p. A1](#).

<sup>3</sup> Post-judgment motions are docketed but not tracked to specific events and disposition. The lack of reliable nexus between a post-judgment motion and its disposition precludes the extraction of reliable data. Therefore, the Task Force reviewed very limited post-judgment case data.

to provide a system of justice responsive to the needs of families and the support of their children.

### **A. Special Considerations – Public Comments**

The Task Force held eight public hearings in courthouses across the State including Presque Isle, Calais, Bangor, Augusta, Rockland, Portland, Lewiston and Springvale.<sup>4</sup> These public hearings provided the Task Force with input from members of the public (some litigants, some not), practitioners in the field of family law, judicial officers, legislators and court personnel. The Task Force also accepted and reviewed written public comments and suggestions.

Public comments touched on various types of family matters cases and a number of challenges faced by litigants. Common themes included the high number of unrepresented litigants, the high cost of legal representation, the level of unfamiliarity with the process and dissatisfaction with the lack of clear expectations.<sup>5</sup> The Task Force was very moved by the courage and insight demonstrated by the individuals that chose to provide input and gave those comments great weight throughout its deliberations. The recommendations contained in this report are in part the product of feedback garnered throughout the public comment period.

#### **1. Domestic Violence**

The Task Force reviewed and considered information regarding the impact of and special considerations necessary when a family matter proceeding involves issues or elements of domestic violence. Although the Task Force does not specifically address domestic violence in its findings, it merits noting that the Task Force finds that domestic violence poses its own unique set of issues that should be treated with care and/or close care should be given to perceived or apparent power and control imbalances between the parties, intimidation and harassment of one party over the other during the family matter process. Furthermore, the Court shall make every effort not to further the victimization of these individuals by ensuring that timely attention is made to financial issues such as child and spousal support. While the current Court process ensures due process to all parties there may be the perception that the parties will not receive the relief requested until their circumstances become untenable.

#### **2. Unrepresented Litigants**

The Task Force reviewed and considered information regarding the types of litigants navigating the court system, the limited access to legal counsel and the various modes of technology and other resources available to assist self-represented litigants through a complex system during a period of high emotional turmoil. The review revealed a continued improvement in the handling

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<sup>4</sup> See [Appendix A at p. A4](#)

<sup>5</sup> There were many comments—provided both by testimony at public hearings and via written comments—regarding litigant dissatisfaction with guardians ad litem. After much deliberation, the Task Force chose to compile all comments regarding guardians ad litem and submit them on behalf of the declarants to the Supreme Judicial Court for its consideration as it reviews the proposed rules and standards submitted by the Guardian *Ad Litem* Task Force and the Guardian *Ad Litem* Stakeholders Group.

of family matters, such as the number of cases processed during a year, number of cases completed during a year, and how the case management process has evolved to a more flexible process. However, there is an understanding that improvements can be made to better handle the ever increasing number of unrepresented litigants as well as the growing population of non-English speaking litigants. Specifically, the task force has looked closely at ways it can better inform litigants about the family matters process and how best it can disseminate useful materials such as handouts, video, accessing resources such as the Lawyers in Libraries and other legal services. As the Court is continually updating and to attempt to keep up to speed with technology

### **3. Magistrate Authority**

The Task Force also scrutinized the scope of magistrate authority to determine whether magistrate authority should be modified in any way to better serve Maine's families and children. Much attention has been given to the authority of the magistrates and their unique role in this process. Some of the recommendations include rule changes to amplify the scope of the magistrate's duties, including a pilot project that would allow magistrates in certain regions to hear contested final hearings by agreement, while another is to clarify the role of the Magistrate such as its authority to hold hearings at case management conferences to obtain child support orders.

### **4. Funding Considerations**

It is worth noting that the Task Force did not limit its recommendations below based on Maine Judicial Branch or other available resources. The Task Force is mindful that in order to implement some of its recommendations, additional funding would need to be allocated to provide for additional judges, family law magistrates, clerks, judicial marshals and other necessary resources. Furthermore, the Task Force recognizes that some recommendations are not within the control of the Judicial Branch and would require action on the part of the Maine State Legislature.

## **V. RECOMMENDATIONS FOR ORIGINAL ACTIONS WITH CHILDREN**

### **A. District Court Authority**

#### **1. Amend 4 M.R.S. §§ 152 and 251**

Amend Title 4 of the Maine Revised Statutes<sup>6</sup> to authorize concurrent jurisdiction for District Court in certain matters currently reserved to Probate Court. Litigants and attorneys expressed dissatisfaction with the disconnect between the various district courts and the county probate courts. Overall, the perception is that when families are required to appear before two completely separate and disconnected legal venues, the result is confusion and waste of precious resources.<sup>7</sup>

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<sup>6</sup> See [Appendix B at pp. B1-2](#).

<sup>7</sup> There was some discussion that the best result would be to consolidate the county probate courts into the Judicial Branch. However, given the mammoth undertaking that would create, the Task Force chose to focus narrowly on the issues having the greatest impact on Maine families and children appearing in family matter cases.

a) Name changes in paternity actions

The District Court should have limited concurrent jurisdiction to order name changes of children subject to paternity actions. When there is a finding of paternity or non-paternity in a family matters action before the District Court, it creates a logistical and financial burden on Maine families to file a petition in Probate Court to effectuate a surname change for the child to correspond with that of the child's legal or biological mother or father.

b) Cooperation/communication between District and Probate Courts

Maine law should clarify the need for District Court judges and Probate Court judges to discuss certain family matter cases in which a parallel probate action is filed or pending—such as a guardianship action—and authorize the Probate Court judge to transfer the probate matter for consolidation before the District Court. Under the current system, family matter cases are often significantly delayed by parallel actions proceeding before the Probate Court. In the alternative, Maine families are required to duplicate time, effort and resources before two legal forums at the risk of conflicting and/or confusing orders. Creating an avenue for the parties and/or District Court to request all family matters be consolidated before the District Court would, in great part, minimize the confusion created by dueling legal forums, decrease intentional delay by one or more of the parties, and conserve family financial resources.

**2. Amend M.R. Civ. P. 110A**

Amend the Maine Rules of Civil Procedure<sup>8</sup> to facilitate communication between the District Court and Probate Court in certain family matters.

a) Coordinate proceedings

Amend the Maine Rules of Civil Procedure and the Maine Rules of Probate Procedure to require communication between District Court and Probate Court when a guardianship action is filed or pending in Probate Court regarding a child or children subject to parental rights and responsibilities or divorce action before the District Court. This would reduce the burden on the parties to attend multiple court events in different but related proceedings. It is crucial for the Probate Court and District Court to attempt to coordinate proceedings that are not consolidated to minimize the amount of delay and financial burden on the parties.

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<sup>8</sup> See FDTF Proposed Amendment to Rule 110A at [Appendix C, p. C4](#)

b) Disclosure of probate matters

Amend the Maine Rules of Civil Procedure to clearly and unambiguously require the parties to a parental rights and responsibilities or divorce action before the District Court disclose the existence of any related matters filed or pending before a Probate Court in this or any other state, as well as the location of any such action. This would reduce delay and uncertainty in the family matters pending before the District Court.

**B. Family Law Magistrate Authority**

**1. Reestablish Family Division Mission and Goals**

Historically, the rules of procedure for family cases were promulgated as the Maine Rules for the Family Division of the Maine District Court. Rule II, entitled “Mission and Goals” provided as follows:

**“II. MISSION AND GOALS**

**A. Mission.** The Family Division’s mission shall be to “provide a system of justice that is responsive to the needs of families and the support of their children.”

4 M.R.S.A. § 183.

**B. Goals.** The goals of the Family Division are:

- (1) To promote a timely resolution of family cases.
- (2) To address promptly the establishment or modification of child support and to promptly enforce compliance with support orders and all other orders in family cases.
- (3) To provide effective case management for family cases involving children.
- (4) To facilitate parenting arrangements in the best interest of children at an early stage in the proceedings.
- (5) To promote education for the parties about parenting issues and to inform litigants about community services available to help them address family problems.
- (6) To provide court users with a better understanding of court processes.
- (7) To identify domestic relations cases in which there is domestic abuse or a power imbalance in order to protect children and adults and to ensure a fair resolution of the case.
- (8) To promote civility in divorce and other family law proceedings.
- (9) To minimize the harm to children caused by family law cases.
- (10) To make appropriate referrals to alternative dispute resolution services.”

M.R. Fam. Div. II (2008).

The Supreme Judicial Court promulgated Chapter XIII of the Maine Rules of Civil Procedure, effective January 1, 2009, which abrogated and replaced the Maine Rules of the Family Division. As part of that amendment, the former Family Division Rule II language became a footnote in the Advisory Notes to the new Rule 100. M.R. Civ. P. 100 (2009).

Currently, many families do not understand the process or expectations. The Task Force recommends that the Supreme Judicial Court reestablish clear and consistent goals for the case management process by placing the Family Division mission and goals back in the body of the Rules and to require that those goals be provided to all litigants and prominently posted in courthouses.<sup>9</sup> Clearly established goals will provide more consistent expectations for families, attorneys and family law magistrates.

## **2. Expand/Clarify Family Law Magistrates to Authority**

Clarify Family Law Magistrate authority to hear uncontested divorce actions, conduct interim hearings on parental rights and responsibilities and modify parental rights provisions of protection from abuse orders.<sup>10</sup>

### a) Amend M.R. Civ. P. 110B and JB-05-18

Amend M.R. Civ. P. 110B<sup>11</sup> and Administrative Order JB-05-18<sup>12</sup> to authorize family law magistrates to conduct final hearings in uncontested divorces with and without children to the extent that federal funding will not be compromised. Parties to a divorce that have reached a full agreement should have ready access to court time for an uncontested hearing. With strained judicial resources this is not always possible in every region, most notably in divorce actions not involving children. Each court should set aside time for final hearings in uncontested divorces (with or without children) as well as uncontested parental rights and responsibilities proceedings so that parties, with some limited notice, could appear for a walk-in uncontested hearing.

### b) Amend M.R. Civ. P. 110

Amend M.R. Civ. P. 110<sup>13</sup> to waive the requirement that mediation be held prior to interim hearings and clarify that family law magistrates may conduct hearings on any interim issue in the best interest of the children—by agreement or *sua sponte* if parties did not file a request to have interim parental rights and responsibilities determined by a judge in accordance with M.R. Civ. P. 110A(b)(4).

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<sup>9</sup> See FDTF Proposed Amendment to Rule 100 at [Appendix C, p. C1](#).

<sup>10</sup> This recommendation is made with the understanding that it will be implemented in a manner to avoid or minimize any impact on crucial federal funding.

<sup>11</sup> See FDTF Proposed Amendment to Rule 110B at [Appendix C, p. C9](#).

<sup>12</sup> See FDTF Proposed Pilot Project at [Appendix D, p. D1](#).

<sup>13</sup> See FDTF Proposed Amendment to Rule 110A at [Appendix C, p.C4](#).

c) Clarify Family Law Magistrate authority to modify PAs

Amend M.R. Civ. P. 110A(a)<sup>14</sup> to clarify family law magistrate authority to modify, by agreement, any provisions of Protection from Abuse Order as necessary to conform with authorized family matters orders.

**3. Reinstigate the Family Law Magistrate Pilot Project**

Historically, there was an Administrative Order creating a Family Law Magistrate Pilot Project that authorized family law magistrates in selected courts to hear, by agreement, final contested divorce proceedings requiring two hours or less court time. See Family Division Magistrate Pilot Project, ME. Admin. Order JB-06-1 (withdrawn May 16, 2011). Subsequent to the implementation of Chapter XIII of the Civil Rules, the Supreme Judicial Court withdrew the administrative order authorizing the pilot project.<sup>15</sup> The Judicial Branch should reinstitute the Pilot Project in a way that would permit family law magistrates to hold final contested parental rights and responsibilities hearings, by agreement of the parties, when the hearing will take no more than three (3) hours.<sup>16</sup> Trailing docket cases are straining the limited trailing docket time and judicial resources. Authorizing family law magistrates to hear contested parental rights and responsibilities hearings that are three (3) hours or less by agreement of the parties would relieve the pressure on the trailing dockets. The Task Force is mindful that pilot project hearings would be at the discretion of the court based on federal funding, available court time and court resources.

**C. Court Procedures for Original Actions with Children**

**1. Enforce M.R. Civ. P. 108**

a) Revise notice of CMC

Revise the Notice of Case Management Conference (CMC) and other informational materials provided to parties to contain an explicit warning that if there is no child support in place, an interim summary child support hearing will be held at the initial CMC regardless of whether a party has failed to timely file a child support affidavit unless the judicial officer finds cause not to do so.

b) Enforce M.R. Civ. P. 108

Enforce M.R. Civ. P. 108(f)(2), which currently provides:

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<sup>14</sup> See [Appendix C, p. C4](#).

<sup>15</sup> Administrative Order JB-11-1 states “[T]he JB-06-1 governing the Family Division Magistrate Pilot Project has been superseded by Maine Rules of Civil Procedure 110-118.” Withdrawal of Administrative Orders JB-05-6 & JB-06-1, Me. Admin. Order JB-11-1 (effective May 16, 2011).

<sup>16</sup> See [Appendix D, p. D1](#).

Parties still experience some delays with issuance of early interim child support orders due to the failure of one or both parties to timely file child support affidavits and/or the attachments thereto.

“(2) A child support order shall be entered notwithstanding a party’s failure to file a child support affidavit. 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:

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

(2) Maine Department of Labor statistics;

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

(4) 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 a jail sentence.

(C) Award attorney fees.”

M.R. Civ. P. 108(f)(2) (emphasis added). Parties still experience some delays with issuance of early interim child support orders due to the failure of one or both parties to timely file child support affidavits and/or the attachments thereto.

c) Amend 19 M.R.S. § 2004

Title 19-A Section 2004 does not mirror M.R. Civ. P. 108 regarding the time to file financial documents. For example, Rule 108 requires that a child support affidavit be filed with the complaint, while Title 19-A M.R.S. 2004 requires the parties to exchange child support affidavits prior to mediation. 19-A M.R.S. 2004(1)(A). Title 19-A should be amended to conform to actual court practice in the interest of providing a system of justice responsive to the needs of families and the support of their children.

**2. Limit Interim Hearings before FLMs to three (3) hours**

Interim hearings should be restricted to three (3) hours unless there has been a demonstration of good cause. Interim hearings have, over time, evolved into lengthy hearings for temporary orders. Limiting interim hearings to three hours will create more access to court time for all parties that need an interim order and reduce the unnecessary expenditure of party and court resources. Cases that need more than three hours for



emergent issues should be referred to the trailing docket as a priority case for final hearing.

### **3. Require parties seeking to modify parental rights and responsibilities or child support provisions of a Protection from Abuse Order to initiate a family matters action**

A motion to amend parental rights and responsibilities or child support provisions of a final Protection from Abuse Order (PA) should trigger a requirement to open a family matters case. Parental rights and child support provisions in protection orders should address emergency situations not provide an avenue to circumvent the family matters process.

### **4. Family Matters Case Assignment**

#### a) Original actions with children

The Task Force concludes that efficient case management is most effectively achieved through the handling of each case by a single family law magistrate. The Task Force proposes establishing a policy, contingent upon judicial resources, that the court assign each original family matters (divorce, parental rights and responsibilities, judicial separation and paternity) to a single family law magistrate (if with children) for case management and, if an agreement is reached, for an uncontested hearing. Such a policy will provide parties with some predictability and consistency and promote effective case management.

#### b) Post-judgment actions with children

In most regions, when a motion to enforce is filed, a judge issues a scheduling order requiring the parties to appear for hearing. If the hearing is predicted to take longer than 20 minutes, the judge will issue a pretrial order and require the parties to return for a final hearing. This process creates confusion and aggravation for the parties and unnecessarily wastes precious judicial resources. Therefore, all motions for post-judgment relief should all be directed to the family law magistrate, including requests for enforcement. If motions to enforce are not resolved at the initial appearance, the family law magistrate should conduct a pretrial and issue a scheduling order setting the matter for final hearing before a judge. Motions to enforce should not be subject to the full case management process.

The Task Force is mindful that continuing the single judicial officer assignment through one or multiple post-judgment actions is not practicable. However, the Task Force recommends that the court enact a provision authorizing parties to request a special assignment of the previous judicial officer in post-judgment actions.

## **5. Provide Guidance on Interviewing Child Witnesses**

Clear guidance for interviewing children would serve the best interest of Maine’s children and families. Recent studies indicate that it can be detrimental to children of a certain age not to be permitted to provide input on the family matters proceeding. However, it is best practice to limit the confrontational nature of the courtroom with regard to child witnesses. Interviews should always be recorded and, if the parties consent, conducted outside the presence of the parents. The judicial officer should always have at least one witness to the child interview (clerk or guardian *ad litem*) present.

The Task Force recommends amending the Maine Code of Judicial Conduct to clarify that the judicial officer, with the consent of the parties, may talk directly to the child witness on the record but outside the presence of the parties. If a party objects, he or she could call the child as a witness in an open proceeding or choose to have the attorneys present when the judge speaks to the child.<sup>17</sup>

## **VI. RECOMMENDATIONS FOR POST-JUDGMENT ACTIONS WITH CHILDREN**

### **A. District Court Authority**

Public comments revealed dismay with the inability of courts and law enforcement to enforce Maine “custody” orders that a parent willfully or flagrantly disobeys, depriving the child(ren) of court ordered contact with their other parent. However, under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), parents with orders from states outside our borders have access to an expedited process unavailable to parents with orders issued in this State. The Task Force recommends amending Title 19-A of the Maine Revised Statutes to enact a statutory provision for expedited post-judgment enforcement of primary residence or contact provisions (and enforcement of interim orders in original actions) similar to the Uniform Child Custody Jurisdiction and Enforcement Act provisions that allow a warrant to be issued when a party withholds child contact in violation of an out-of-state order. See 19-A M.R.S. §1768 et seq.<sup>18</sup> While the Task Force is mindful that not every missed or delayed contact or visit should result in an immediate court hearing or intervention, it is also cognizant of the impact that denied contact during a period of protracted litigation does not serve the best interest of Maine’s families and children.

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<sup>17</sup> See FDTF Proposed Amendment to Canon 3 at [Appendix C, p. C11](#).

<sup>18</sup> See FDTF Proposed 19-A M.R.S. §§ 1660-1661 at [Appendix B, p. B3](#).

## **B. Family Law Magistrate Authority**

### **1. Post-Judgment Motions for Relief (Enforcement and Modification)**

#### a) Combined post-judgment motion for relief<sup>19</sup>

Amend M.R. Civ. P. 110A(6)(A)-(B) and 120, combining motions to modify and to enforce into a single motion for post-judgment relief. Under the current Rules, motions to enforce are directed to a judge for hearing. The rule requiring motions to enforce to proceed directly to a judge was promulgated in 2009 with the express purpose of expediting these motions for hearing. In practice, this purpose has gone primarily unfulfilled, and motions to enforce are rarely before the court in an expedited fashion due to limitations on judicial resources. In most regions, when a motion to enforce is filed, a judge issues a scheduling order requiring the parties to appear for hearing. If the hearing is predicted to take longer than 20 minutes, the judge will issue a pretrial order and require the parties to return for a final hearing at a later date. This process creates confusion and aggravation for the parties and unnecessarily wastes precious judicial resources. Therefore, all motions for post-judgment relief should be directed to the family law magistrate, including requests for enforcement.

Family law magistrates will triage and identify those motions where the moving party is seeking enforcement only. If motions to enforce are not resolved at the initial appearance, the family law magistrate should conduct a pretrial conference and issue a scheduling order setting the matter for final hearing before a judge. Motions to enforce should not be subject to the full case management process.

#### b) Develop motion for post-judgment relief

Develop and implement a new form for post-judgment motions directing the parties to identify the particular relief sought. The appropriate notice regarding the post-judgment procedure and warnings should be incorporated.

### **2. Motions for Contempt**

#### a) Amend M.R. Civ. P. 110A(6)(A)-(B)

Motions for Contempt should appear on the post-judgment block schedule before the family law magistrate.<sup>20</sup> In most regions, when a motion for contempt is filed, the court issues a subpoena and notice of hearing requiring the parties to appear for hearing. If the hearing is predicted to take longer than 20-30 minutes, the judge will issue a pretrial order and require the parties to return for a final hearing. This process creates confusion and aggravation for the parties who think that their hearing will be

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<sup>19</sup> See FDTF Proposed Combined Motion for Post-Judgment Relief at [Appendix E, p. E1](#). Also see [Section IV\(C\)\(4\)\(b\)](#) of this Report.

<sup>20</sup> See [Appendix C, p. C4](#).

held at the initial appearance and unnecessarily wastes precious judicial resources. Therefore, all motions for contempt should be initially directed to the family law magistrate. If motions for contempt are not resolved at the initial appearance, the family law magistrate should conduct a pretrial conference and issue a scheduling order setting the matter for final hearing before a judge. Motions for contempt should not be subject to the full case management process.

b) Family Law Magistrates to set final contempt hearing before judge

Amend M.R. Civ. P. 66 and 120<sup>21</sup> to clearly authorize the family law magistrate to order parties to appear at the final contempt hearing under the continuing obligations and risks outlined in the contempt subpoena. In the alternative, new subpoenas could be served at the initial appearance if a final hearing is necessary. Parties should clearly understand that they will have an opportunity for a brief mediation (in regions operating the post-judgment blocks) and a pretrial conference. If either party fails to appear at the final hearing, only the judge would be authorized to issue the penultimate contempt sanction.

## **C. Court Procedures in Post-Judgment Actions with Children**

### **1. Motions to Modify**

Establish some mechanism to test whether a party has established a prima facie showing of a “change of circumstance” prior to requiring the parties to fully litigate post-judgment motions to modify. Parties that file repetitive post-judgment motions subject the other party to the entire court process, including final hearing, just to reach the initial question of whether there has been a change of circumstance sufficient to warrant court action. This process puts an undue strain on party resources, leaves certain families in a constant state of uncertainty and unduly squanders precious court resources.

The Task Force is mindful that due process concerns must be balanced and may limit the court’s ability to vet whether a change of circumstances constitutes a “substantial” change without the opportunity for a full hearing. However, the Task Force suggests that the current process is not working in those—even if rare—circumstances where the post-judgment process is abused.

### **2. Post-Judgment Blocks**

Expand the post-judgment block scheduling triage model for all post-judgment cases with children to all courts with sufficient caseloads and resources. This process, affording the parties an opportunity for a brief mediation, is successful at resolving cases at the initial appearance. The presence of a mediator is axiomatic to the successful, early resolution of these post-judgment motions and should be required for all post-judgments docketed resources permitting. Post-judgment motions and motions for contempt that do not resolve should undergo a pretrial conference setting the matter for final hearing

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<sup>21</sup> See FDTF Proposed Amendment to Rule 120 at [Appendix C, p. C10](#).

before a judge. By setting all post-judgment cases for triage in a “block” format, parties are given realistic expectations of the court process, and judicial resources are most efficiently and effectively utilized in the best interest of Maine’s children and families.

### **3. Enforcement During Appeal**

Amend M.R. Civ. P. 62(a) to clarify that motions to enforce any provision of a family judgment relating to child support and/or parental rights and responsibilities can be adjudicated during the pendency of any appeal.

## **VII. RECOMMENDATIONS FOR DIVORCE ACTION WITHOUT CHILDREN**

### **A. Court Procedure in Original Divorces without Children**

#### **1. Amend Divorce without Children Scheduling Order**

##### a) Revise case flow

Revise the family matter scheduling order<sup>22</sup> in cases with no minor children in compliance with M.R. Civ. P. 110B(a) to provide consistency across courts as well as to give clear guidance to the parties regarding discovery and other deadlines. The recommended form may require the Judicial Branch to amend its scheduling practices—or make them consistent from region to region, court to court—to allow the scheduling of events more than 120 days in the future.

##### b) Automatic final hearing

In cases where no timely answer is filed by the Defendant, the court should promptly issue a Notice of Final Hearing setting a final hearing date as soon as practicable after the expiration of the 60 day waiting period.<sup>23</sup>

##### c) Emergency measures

Parties should file an “agreed to” Interim Order within 60 days of filing the proof of service (incorporate into scheduling order) regarding payment of household expenses and or support at a set date in every case. Parties may request that the court schedule an interim hearing as necessary.

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<sup>22</sup> See FDTF Proposed No Kids Scheduling Order at [Appendix E, p. E4](#)

<sup>23</sup> See FDTF Proposed Notice of Final Hearing at [Appendix E, p. E5](#).

## **2. Trailing Docket Priority for Cases without Children (not reached)**

### a) Timely resolution of divorce cases

Ensure that divorces without children are heard in a timely manner in geographic areas where the trailing docket is a combined FM-PC docket with the result that cases without children are given lowest priority.

### b) Add divorce as a priority docket

Establish a priority list for divorce cases that are not reached due to other priority caseloads, or divorce cases without children that have additional complicating factors such as expert witnesses. This practice would reduce the financial burden on parties that must pay witnesses to prepare and/or appear for more than one trailing list.

### c) Update financial information

If a case is not reached, require parties to file updated financial/witness information (if changed) at least one week prior to the start of the trailing docket.

## **B. Court Procedure in Post-Divorce Actions without Children**

In post-divorce cases, implement block scheduling in all courts that cannot schedule these cases individually within 45 days of their filing date. Triage cases early on, at the initial block appearance whenever practicable, to identify cases requiring immediate emergency attention. Parties should have a clear process, perhaps identified in the scheduling order, to request expedited court intervention.

## **VIII. POLICY and PROCEDURE RECOMMENDATIONS REGARDING ALL FAMILY CASES**

### **A. Family Law Magistrate Authority**

Family law magistrates should conduct uncontested divorce hearings with and without children to the extent that federal funding will not be compromised.

### **B. Court Procedure for all Family Cases**

#### **1. Access to Uncontested Court Time Post-Mediation**

Parties that reach a partial or full resolution at mediation should have the opportunity to place their agreement on the record immediately following their mediation. This would reduce the number of case events, prevent agreements from deteriorating, and preserve judicial resources.

## **2. Designated Walk-In Court Time for Uncontested Actions**

Each court should schedule walk-in time for uncontested divorce and parental rights and responsibilities hearings for both represented and unrepresented litigants. Parties must demonstrate that the hearing is truly “uncontested”; if only one party attends, the opposing party must file a signed written statement acknowledging that the hearing is both final and uncontested. The Judicial Branch should promulgate a check list outlining requirements, including any documents the parties must bring, to be eligible for a final, walk-in uncontested hearing.<sup>24</sup> The Task Force is mindful that the logistics may present challenges that will need to be resolved regionally, but asserts that the benefits to Maine families would ultimately outweigh any barriers faced by the court.

## **3. Effective use of Trailing Dockets**

### a) Monthly trailing dockets

Each court should hold family matter trailing dockets at least monthly. Cases should be exposed for a maximum number of days per month. Long delays (sometimes up to three months) leave parties, witnesses, experts and attorneys vulnerable for an unacceptably long period of time.

### b) Priority cases for date certain

Cases involving paid expert witnesses, out-of-state parties or out-of-state witnesses should be given a date certain to appear to avoid excessive cost to the parties.

### c) Inactive status

Cases in which the parties are considering reconciliation or a temporary order (or where other good cause exists) should be separately tracked by the Court system to avoid the pressure to move the case forward to trial on the trailing docket.

## **4. Integrate System to identify or Consolidate Parallel Cases**

Enhance system integration to identify divorce or parental rights cases that have related protection from abuse proceedings filed or pending so that presiding judicial officers have full access to both files to ensure that orders pending and final orders are not inconsistent. This would create a more efficient system, reduce court events and, most importantly, empower the presiding judicial officer with all necessary information to make orders impacting Maine families that are in the best interest of the children and safety of all parties.

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<sup>24</sup> See FDTF Proposed Checklist for Final Hearing at [Appendix E, p. E6](#).

## **5. Streamline Post-Judgment Motions**

### a) Combined post-judgment motion

Post-divorce motions to modify and to enforce should be combined so that both forms of relief could be requested on one motion to avoid the expense and time of filing two motions regarding the same issue.

### b) Enforcement relief for contempt motion

Authorize judge hearing a motion for contempt to issue enforcement relief with or without a finding of contempt or, if necessary to achieve the purposes of the Judgment to amend the Judgment.<sup>25</sup>

## **6. Increase Access to Attorneys**

### a) Technology

Attorneys practicing in multiple courts are still subject to conflicting scheduling orders where they are required to be in two courthouses at the same time and there is no system in place for determining which case takes priority. The Judicial Branch should study the feasibility of increasing more accessible means for counsel to appear by video (especially between courthouses) as well as telephonically.

### b) Limited appearance

Attorneys continue to face conflicts when entering limited appearances. The court should simplify the process for attorneys to enter a limited appearance and to be released from a case based on the limited appearance agreement.

## **7. Attorney Fees**

Public comment was consistent that the cost of legal services can create an overwhelming burden on litigants. While the Task Force acknowledges that the court may find conflict in directly limiting attorney fees, the court should take a more active role in assessing attorney's fees as cases progress. If attorney fees are creating hardship for one or more of the parties, the scheduling order may be adjusted to move cases forward in a cost-sensitive manner.

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<sup>25</sup> See FDTF Proposed Amendment to Rule 120 at [Appendix C, p. C10](#).



## **IX. ADDRESSING THE INCREASING UNREPRESENTED POPULATION**

### **A. Court Resources for Unrepresented Litigants**

The number of unrepresented litigants has been increasing for several years. Between 2010 and 2012, the percentage of cases with one or fewer attorneys increased from 70% to 75%. The number of cases before family law magistrates in 2012 with one or fewer attorneys approached 86%. With current resources, Maine's legal aid programs can service only one (1) out of every five (5) litigants that meet the financial requirements to qualify for services.

#### **1. Resource Materials**

The court should develop better resource materials for unrepresented parties including videos<sup>26</sup> available on websites and in county libraries; courthouse assistance projects, lawyers in libraries, etc. In addition to providing guidance on what forms to complete, how to complete the forms and what information to provide to the other party and the court, these resource materials should outline the standard process for the case type filed and give litigants clearer expectations of the case process and requirements at the inception of the case (or the beginning of their involvement in the case.)<sup>27</sup>

#### **2. Party utilization of resources**

The Task Force recommends that a Judge have the ability to require that litigants certify they have watched the videos applicable to their case. Parties that appear at first court event should be sent to a kiosk to watch the video if they have not already done so.

#### **3. Check lists**

Develop an "Important Information Checklist" which outlines critical information that parties should be providing to the court. The checklist could be incorporated into the summary sheet and, at a minimum, require parties to provide information such as a "back-up contact address" as well as identifying any emergent or other special considerations. Checklists should not require information regarding mental health or disabilities.

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<sup>26</sup> YouTube could be used to host videos on such topics as "Selecting and Working With a Lawyer", "Completing your Divorce Forms", "What to Expect at a Pretrial Conference", "How to Prepare for an Interim Hearing", "How to Prepare for a Final Hearing", "What Happens in the Courtroom at a Hearing", "Documents you Will Need to Gather for Your Divorce Proceeding", and "Keeping your Address Confidential in a Case Where Domestic Violence Exists".

<sup>27</sup> For example, several grandparents testified at public hearing that they did not understand the difference between grandparent visitation, de facto parent and third party parental rights and responsibilities. Others individuals indicated that they did not understand the case flow or how to get before the court quickly to address emergent situations.

## **B. Community Resources for Unrepresented Litigants**

### **1. Volunteer attorney settlement conferences**

The FDTF recommends a volunteer program where experienced family law attorneys could act as settlement conference officers in cases without children where parties are not represented by attorneys so long as domestic violence is not present in the case. The assumption is that lawyers would volunteer for a two-hour block of time preferably in a courthouse away from their normal area of practice to minimize conflicts of interest.

### **2. Expand courthouse assistance projects**

Courthouse assistance projects are very effective where present and should be expanded to courthouses where they are not currently offered.

### **3. Forms—A2J guided software**

The Judicial Branch should work with the Maine Bar Association and other legal service providers to investigate the feasibility of one or more legal service provider launching an A2J program—possibly in conjunction with the courthouse assistance projects—to provide guided completion of forms to parties in real time in sites readily accessible to the public.

A2J Author is a tool that was developed with funding from the State Justice Institute and the Legal Services Corporation to promote greater efficiency and accuracy in the production of automated court forms. A2J Author is designed (like Turbo Tax) as a customer-friendly interface for data collection and document assembly. A2J Author walks a user through a series of online “interview” questions. These questions are designed by the licensee to address the unique forms and rules of each state court system. An avatar conducts the interview and, quite literally, advances the user towards a virtual courthouse as each question is answered. Legal terms and processes are explained in greater detail as informational “pop-outs” if the user chooses.

A2J Author collects user data during the interview, but does not assemble the documents. Therefore, all interviews would need to operate with a HotDocs template in the background; HotDocs is the software program that performs the actual document assembly.

## **X. CONCLUSION**

As the Task Force noted at the beginning of the review process, the scope of its review of the Family Matters Process under the Supreme Judicial Court’s charter does not expressly encompass an assessment of whether the resources currently available to the Family Division are sufficient to permit the Family Division to achieve its stated goals. Thus, the Task Force

reviewed the family process within the context of the best interests of Maine's children and families. As with the Judicial Branch generally, the Family Division is under-resourced. The Task Force acknowledges that some of the recommendations contained herein would require the State of Maine to appropriate and to allocate additional resources, including hiring the necessary judges, magistrates and clerks, to implement all of the recommendations necessary to advance the Family Division's mission. However, in doing so, the efficacy and efficiency of the family matters process would be greatly improved.

FAMILY DIVISION TASK FORCE – 2013  
(FDTF)



APPENDICES  
to the  
Final Report to the Justices  
of the  
Maine Supreme Judicial  
Court

# APPENDIX A

## FAMILY DIVISION TASK FORCE CHARTER

<b>FDTF Charter</b> .....	A1
<b>FDTF Notice of Public Hearing</b> .....	A4

**JUDICIAL BRANCH**  
**Family Division Task Force—2013**

**Type:** Task Force  
**Established:** March 7, 2013  
**Revised:** September 20, 2013  
**Chair:** Honorable Daniel Driscoll  
**Report Date:** May 30, 2014  
**Reports to:** Maine Supreme Judicial Court, Trial Court Chiefs

**I. Purpose**

The purpose of establishing the Family Division Task Force—2013 is twofold: First, to review and update the status of changes recommended by the Family Division Task Force—2006 Report; second, to make recommendations to the Chief Judge of the District Court, and to the Maine Supreme Judicial Court regarding any changes to procedures, law, or rules necessary to advance the Family Division’s mission.<sup>28</sup> Toward this end, the Task Force will:

- A. Review the Family Division Task Force—2006 Report, and evaluate the progress towards implementation of any recommendations;
- B. Receive the input of the public, the Bar, and additional Stakeholders;
- C. Study and make recommendations regarding the timing, scheduling, and processing of family matters in the District Courts;
- D. Study and make recommendations regarding the scheduling and management of family matters as those activities relate to the scheduling and management of other case types;
- E. Study and make recommendations for improving the allocation of resources and/or the management of family matters;
- F. Study and make recommendations regarding statistical information compiled by the Family Division; and
- G. Examine such other related topics as are identified by the Task Force.

The overarching goal of the Task Force is to review the processing of family matter cases in Maine, and to recommend any changes that will best serve the needs of children and families. This may include recommendations that would: eliminate magistrate or judicial events that create unnecessary costs or delays, create different or improved procedures that promote prompt and effective resolution of disputes, and allow for better allocation of magistrate and judicial resources.

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<sup>28</sup> The Family Division of the Maine District Court was established in 1998. The Division adopted a case management process to achieve its stated mission of “providing a system of justice that is responsive to the need of families and support of their children.” 4 M.R.S. § 183 (2005).

## **II. Membership**

The following individuals shall serve as members of the Task Force:

- Two District Court Judges
- One Superior Court Justice
- One Magistrate
- Two Clerks of Court
- One Legislator—House of Representatives
- One Legislator—Senate
- One Representative of the Maine State Bar Association
- One Guardian ad Litem
- One Representative of the Attorney General’s Office
- One Family Law Practitioner
- One Member with Domestic Violence Experience
- Others as Designated by the Chief Justice

## **III. Meetings**

The Task Force will meet on a schedule established by its Chair. The Chair may also, in his discretion, establish subcommittees of Task Force members.

## **IV. The Report**

Unless otherwise ordered by the Chief Justice, the Task Force will issue its written report and recommendations to the Supreme Judicial Court on or before May 30, 2014. The Task Force’s recommendations should include drafts of any statutory and rule amendments that will be required to implement its recommendations. The Task Force may also propose an implementation plan and schedule.

Dated: September 20, 2013

Approved by:

\_\_\_\_\_  
/s/  
Chief Justice Leigh I. Saufley  
Maine Supreme Judicial Court

**JUDICIAL BRANCH**  
**Family Division Task Force—2013**

**MEMBERSHIP ROSTER**

Hon. Daniel Driscoll, Maine District Court, Chair  
Hon. Bruce Jordan, Maine District Court  
Hon. A. Mark Horton, Maine Superior Court  
Magistrate Maria Woodman  
Gail Merritt, Family Division Manager, Cumberland County Clerk's Office  
Diana Durgin, Assistant Clerk, Newport District Court  
Representative Kimberly Monaghan-Derrig  
Senator Roger J. Katz, Esq.  
Diane Dusini, Esq.  
Anthony A. Trask, Esq.  
Debby L. Willis, AAG  
Barbara L. Raimondi, Esq.  
Richard W. Elliott, Esq.  
Bonita Usher, Public Member

Staff Consultant:

Tracie Adamson, Family Division Manager

Supreme Judicial Court Liaison:

Hon. Jon D. Levy, Associate Justice



## **NOTICE: Public Meeting to Hear Comments on Family Matters Case Process**

The Maine Supreme Judicial Court established the Family Division Task Force in 2013 to make recommendations to the Chief Judge of the District Court, and to the Supreme Judicial Court regarding any changes to procedures, law or rules necessary to advance the Family Division's Mission of "providing a system of justice that is responsive to the needs of families and the support of their children." To this end, the Family Division Task Force will hold open meetings throughout the State as listed below. The purpose of the meeting is to receive input and suggestions for the review of family matter cases and to recommend any changes that will best serve the needs of children and families.

Public comments may be limited in duration depending on the number of individuals wishing to provide comment, and should not reference specific cases. Written comments will be accepted until 5:00 p.m. on January 24, 2014. Written comments may be submitted to [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov).

For more details, please visit the Maine Judicial Branch website at [http://www.courts.maine.gov/news\\_reference/news/index.shtml](http://www.courts.maine.gov/news_reference/news/index.shtml).

### **Public hearings will be held from 4:15 - 6:00 pm as follows:**

January 6, 2014 (Presque Isle District Court)  
January 7, 2014 (Calais District Court)  
January 8, 2014 (Bangor District Court)  
January 9, 2014 (Rockland District Court)  
January 13, 2014 (Lewiston District Court)  
January 14, 2014 (Portland District Court)  
January 15, 2014 (Springvale District Court)  
January 16, 2014 (Augusta District Court)

# APPENDIX B

## PROPOSED STATUTORY CHANGES

<b>FDTF Proposed Amended 4 M.R.S. § 152</b> .....	B1
<b>FDTF Proposed 4 M.R.S. § 251-A</b> .....	B2
<b>FDTF Proposed 19-A M.R.S. §§ 1660-1661</b> .....	B3

## **FDTF Proposed Amended 4 M.R.S. § 152**

4 M.R.S. §152(5-A) is enacted to read:

### **§152. DISTRICT COURT; CIVIL JURISDICTION**

**5-A. Concurrent Jurisdiction with Probate Court.** Limited jurisdiction, concurrent with that of the Probate Court, of the following types of actions:

Actions for divorce, annulment, judicial separation, parental rights and responsibilities and paternity as follows:

The District Court may communicate with any Probate Court of this State that has before it a related action for guardianship that involves the same parties and/or child(ren) subject to the proceeding in District Court to coordinate proceedings. After consultation with the Probate Court, or upon motion of one or more of the parties, the Probate Judge may transfer the probate proceeding to the District Court for consolidation with the pending family matter. The District Court has concurrent jurisdiction over these actions for guardianship of minors that have been transferred from the probate court for consolidation with a related family matter case pending or subsequently filed before the District Court.

Original and concurrent jurisdiction with Probate Court to change the name(s) of any minor(s) subject to a paternity action or paternity finding before the District Court.

## **FDTF Proposed 4 M.R.S. § 251-A**

4 M.R.S. §251-A is enacted to read:

### **§251-A. TRANSFER OF JURISDICTION**

Each judge may communicate with any Maine District Court that has before it a related action for divorce, parental rights and responsibilities or paternity that involves the same parties and/or child(ren) subject to the proceeding in Probate Court to coordinate proceedings. After consultation with the District Court, or upon motion of one or more of the parties, the Probate Judge may transfer the probate proceeding to the District Court for consolidation with the pending family matter. If the District Court accepts jurisdiction of the probate proceeding for consolidation with the family matter, the District Court will retain jurisdiction until a final judgment is issued granting or denying the petition for guardianship.

## FDTF Proposed 19 M.R.S. §§ 1660-1661

19-A M.R.S. §§ 1660-1661 are enacted to read:

### **§1660. EXPEDITED ENFORCEMENT OF MAINE CHILD CUSTODY DETERMINATION**

**1. Petition for enforcement verified.** A petition under this subchapter must be verified. Certified copies of all orders of this State sought to be enforced must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

**2. Petition contents.** A petition for enforcement of a parental rights and responsibilities determination must state:

A. Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the docket number and the nature of the proceeding;

B. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, guardianships, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

C. The present physical address of the child and the respondent, if known.

**3. Order directing appearance; hearing.** Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

**4. Contents of order.** An order issued under subsection 3 must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

A. The issuing court did not have jurisdiction;

B. The parental rights and responsibilities determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so; or

C. The respondent was entitled to notice, but notice was not given.

## **§1661. Hearing and order**

**1. Immediate physical custody of child.** Upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- A. The issuing court did not have jurisdiction;
- B. The parental rights and responsibilities determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so; or
- C. The respondent was entitled to notice, but notice was not given.

**2. Award of fees, costs and expenses.** The court shall award the fees, costs and expenses authorized under this section and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

**3. Refusal to answer.** If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

**4. Privilege and immunity may not be invoked.** A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

# APPENDIX C

## PROPOSED RULE CHANGES

<b>FDTF Proposed Amendment Rule 100</b> .....	<b>C1</b>
<b>FDTF Proposed Amendment to Rule 101</b> .....	<b>C3</b>
<b>FDTF Proposed Amendment to Rule 110A</b> .....	<b>C4</b>
<b>FDTF Proposed Amendment to Rule 110B</b> .....	<b>C9</b>
<b>FDTF Proposed Amendment to Rule 120</b> .....	<b>C10</b>
<b>FDTF Proposed Amendment to Canon 3</b> .....	<b>C11</b>

## FDTF Proposed Amendment to M.R. Civ. P. 100

### RULE 100. SCOPE OF THE FAMILY DIVISION RULES

**A. Mission.** The rules in this chapter shall govern procedure in the District Court and, where applicable, procedure on post-judgment motions in the Superior Court, in all actions for divorce, annulment, judicial separation, paternity or parentage, parental rights and responsibilities, child support, emancipation, visitation rights of grandparents, and any post-judgment motions arising from these actions. The District Court shall have exclusive jurisdiction over such actions, except that (1) any issue on which there is a constitutional right to a trial by jury may be heard and decided by a jury in the Superior Court upon a proper and timely request for transfer in accordance with Rule 76, and (2) the Superior Court may continue to hear post-judgment motions in actions that were pending or concluded in the Superior Court on or before December 31, 2000 and have not been transferred to the District Court. Reference to the court within this chapter includes District Court Judges, Superior Court Justices, and Family Law Magistrates, unless otherwise specified.

The Maine Rules of Civil Procedure shall govern all matters not addressed in these Family Division Rules. The rules in this chapter shall be construed to provide a system of justice that is responsive to the needs of families and the support of their children.

**B. Goals.** The goals of the Family Division are:

- (1) To promote a timely resolution of family cases;
- (2) To address promptly the establishment or modification of child support and to promptly enforce compliance with support orders and all other orders in family cases;
- (3) To provide effective case management for family cases involving children;
- (4) To facilitate parenting arrangements in the best interest of children at an early stage in the proceedings;
- (5) To promote education for the parties about parenting issues and to inform litigants about community services available to help them address family problems;
- (6) To provide court users with a better understanding of court processes;
- (7) To identify domestic relations cases in which there is domestic abuse or a power imbalance in order to protect children and adults and to ensure a fair resolution of the case;
- (8) To promote civility in divorce and other family law proceedings;
- (9) To minimize the harm to children caused by family law cases; and,
- (10) To make appropriate referrals to alternative dispute resolution services.



Advisory Notes  
June 2014

When Chapter XIII of the Maine Civil Rules of Procedure abrogated and replaced the former Family Division Rules, the Family Division goals were moved to a footnote in the Advisory Notes. Given the sentiment expressed in the public comments that litigants and attorneys did not know “the purpose” of the case management process, the goals are now more prominently located in the body of Rule 100. Although not As restated here, this chapter promotes the goals of the Family Division that previously appeared ~~provided~~ in FAM DIV II.B.1

Matters not addressed in the Family Division Rules are governed by the other provisions of the Maine Rules of Civil Procedure.

## FDTF Proposed Amendment to M.R. Civ. P. 101

### RULE 101. COMMENCEMENT OF ACTION

- (a) **Filing.** Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. 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. 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, a verified confidential statement of any other related actions previously filed, currently filed or pending before any court of this or another state, 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.
- (c) **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 Notes June 2014

Subdivision (b) is amended to add a provision that in addition to the requirement to file a summary sheet, a confidential statement of any other related actions—such as child protection, protection from abuse, or probate matters—must be filed with each initiating action.

Confidential disclosure forms will need to be developed so that the initiating or responding party may complete the disclosure regarding related court actions.

## FDTF Proposed Amendment to Rule 110A

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

**(a) Family Law Magistrates.** In all Family Division actions involving minor children, 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 prior to judgment under Rule 107(a) and act on motions for expedited hearings under Rule 107(b); (4) issue final orders establishing or modifying child support; and (5) issue orders in child support enforcement actions. In an uncontested proceeding, magistrates may issue divorce judgments, paternity judgments, parentage judgments, judicial separation decrees, final orders establishing parental rights and responsibilities, 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 parental rights and responsibilities portion of the protection order to conform with the orders authorized above. When the child(ren) is subject to a Protection from Abuse order brought by one of the parties on behalf of the child(ren), magistrates may amend, by agreement of the parties, 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, except an emancipation action, 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: 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 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 two weeks 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) *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 both 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 90 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. Both parties, or an 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 90 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 both parties or their attorneys, indicate what issues, if any, remain unresolved in the case, and include a date for a status conference, mediation, payment of mediation fee, or a final hearing not to exceed 90 days from 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, a case management conference will be scheduled.

(3-A) Communication with other courts. If a related proceeding regarding the child(ren) named in an action under this Chapter is pending or filed, this court should communicate with the other court. The proceeding under this Chapter shall not be stayed unless, after consultation with the other court, this court determines that a stay is necessary and in the best interest of the child(ren). If a related proceeding is filed in a Probate Court of this State, this court should communicate with the Probate Court to coordinate proceedings in the best interest of the children, including by inquiring whether the Probate Court seeks to transfer the related matter to the Maine District Court for consolidation with the family matter proceeding under this Chapter.

(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 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 agreed 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.* If, ~~after mediation,~~ the parties have not reached an interim agreement by the initial appearance or by motion in accordance with Rule 107, the magistrate may conduct a hearing on the contested issues and enter an interim order. 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.

(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.* When issues remain in dispute and mediation 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.

(6) *Post-Judgment Motions.*

(A) *Motions to Modify or to Enforce.*

(i) There shall be one form motion for requesting the relief or modification and/or enforcement. The magistrate shall review the motion and any relief requested therein and schedule the matter in accordance with this section.

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

(iii) *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 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 post-judgment motion seeking to enforce a judgment or order shall be addressed in a timely fashion and shall not be included in the full case management process. 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. magistrate for pretrial conference. If the motion is heard on a post-judgment docket that provides for an initial mediation, the magistrate may order the parties to mediate at that initial appearance. If the post-judgment motion remains contested at the close of the initial appearance, the magistrate shall refer the matter for final hearing before a judge on the next available date. 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~~ magistrate for pretrial conference. If the motion is heard on a post-judgment docket that provides for an initial mediation, the magistrate may order the parties to mediate at that initial appearance. If the post-judgment motion remains contested at the close of the initial appearance, the magistrate shall refer the matter for final hearing before a judge on the next available date.

(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 Notes  
June 2014

Subsection (a) is amended to clarify that magistrates may amend the parental rights and responsibilities portion of the protection order by a party on behalf of a child(ren) by agreement of the parties in order to conform with the orders authorized under this Section.

Subsection (b)(3-A) recognizes that related cases filed or pending in other courts, most notably probate courts of this State, may impede the Family Division's ability to best serve the needs of Maine's children and families. Coordination between courts would reduce confusion, minimize the burden placed on party and court resources and reduce the issuance of competing orders.

Subsection (b)(4)(C) is amended to waive the requirement that mediation be held prior to interim hearings and to clarify that family law magistrates may conduct hearings on any interim issue in the best interest of the children—by agreement or *sua sponte* if parties did not file a

request to have interim parental rights and responsibilities determined by a judge in accordance with M.R. Civ. P. 110A(b)(4).

Amendment to Subsections (b)(6)(A) and (B) recognize that it is a more efficient use of court resources to have one post-judgment motion that requires the parties to select the relief requested.

Amendment to Subsections (b)(6)(B) and (C) recognize that in most regions, when a motion to enforce is filed, a judge issues a scheduling order requiring the parties to appear for “hearing”. When a motion for contempt is filed, the parties are ordered to appear for a “hearing” on the motion for contempt. In practice, if the post-judgment hearing is predicted to take longer than 20 minutes, the judge will issue a pretrial order and require the parties to return for a final hearing at a later date. In order to preserve judicial and party resources, all motions for post-judgment relief should be directed to the family law magistrate, including requests for enforcement. If motions to enforce are not resolved at the initial appearance, the family law magistrate should conduct a pretrial and issue a scheduling order setting the matter for final hearing before a judge. Motions requesting enforcement relief and motions for contempt should not be subject to the full case management process.

## **FDTF Proposed Amendment to Rule 110B**

### **RULE 110B. PREHEARING SCHEDULE AND PROCEDURE FOR CASES INVOLVING NO MINOR CHILDREN**

The procedures in this rule apply to all actions under this chapter in which there are no minor children, except post-judgment motions.

(a) **Scheduling Order.** Upon the filing of an answer, response, or entry of appearance, the court shall issue a Scheduling Order which sets deadlines for: filing of financial statements and real estate certificates, scheduling and completion of mediation as provided in Rule 92(b), completion of discovery, date for exchanging witness and exhibit lists, scheduling of a pre-trial conference if necessary, filing of motions, and placement of the action on the trial list. Before the issuance of the Scheduling Order, parties may file an agreed-upon Scheduling Order covering all the deadlines outlined above. The Scheduling Order may be modified upon motion and for good cause shown. An agreement by the parties to amend the Scheduling Order may constitute good cause shown. Sanctions may be imposed for noncompliance with the order.

(b) **Failure to Respond.** If no answer, response, or entry of appearance is filed, the clerk shall set the case for an uncontested hearing. A family law magistrate may hear a final uncontested divorce under this section.

(c) **Prehearing Conference.** Upon the court's own motion or at the request of a party, the court may hold prehearing conferences, including a judicial settlement conference, as provided in Rule 16(b) or Rule 16A and to address prehearing and hearing issues including case management. The court shall exercise its discretion in deciding whether to permit a party to participate in conferences, mediation or hearings by telephone.

(d) **Post-Judgment Motions.** The pretrial procedure for post-judgment motions in which there are no minor children shall be left to the discretion of the court upon review of the filings.



## **FDTF Proposed Amendment to Rule 120**

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

(a) Except as otherwise provided in Title 19-A, any proceedings for modification or enforcement of a final judgment in an action under this chapter shall be on a motion for post-judgment relief. The motion shall be served in accordance with Rule 103. 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 Summary Sheet, and a verified confidential statement of any other related actions previously filed, currently filed or pending before any court of this or another state, which is are available from the clerk.

(b) The court shall hold a hearing on a motion for post-judgment relief, unless (i) the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary, or (ii) 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 days after notice of a decision under these rules, 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 Notes June 2014

Amendment to Subsections (a) recognizes that it is a more efficient use of court resources to have one post-judgment motion that requires the parties to select the relief requested. It also provides that after a hearing on a motion for contempt, the court may, without a finding of contempt, amend the underlying judgment or order as necessary to achieve the purposes of the underlying judgment or order.

## **FDTF Proposed Amendment to Canon 3**

### **CANON 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the standards set forth in sections B through E of this Canon apply.

#### B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
- (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others while subject to the judge's direction and control.
- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and should not permit staff, court officials, and others while subject to the judge's direction and control to do so.
- (6) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others. This subsection (6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or other similar factors, are issues in the proceeding.
- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
  - (a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:
    - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte

communication and allows a reasonable opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the identity of the person consulted and the substance of the advice, and affords the parties a reasonable opportunity to respond.

(c) A judge may consult with court personnel, or persons appointed by the court, whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties with or without their lawyers present, or separately with their lawyers alone, in an effort to mediate or settle matters pending before the judge.

(e) A judge may, on the record and with the consent of the parties, meet with a minor child who is a witness in a family matters proceeding outside the presence of the parties. At least one witness should be present.

(f) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

# APPENDIX D

PROPOSED ADMINISTRATIVE ORDER ON THE  
FAMILY LAW MAGISTRATE PILOT PROJECT

# **FDTF Proposed Pilot Project**

## **STATE OF MAINE SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-14-\_\_\_

### **FAMILY DIVISION MAGISTRATE PILOT PROJECT**

Effective: \_\_\_\_\_, 2014

WHEREAS, the Chief Justice of the Supreme Judicial Court has been authorized to establish a pilot project in which one or more Family Law Magistrates have jurisdiction to hear and to dispose of all elements of a divorce action when both parties consent;

WHEREAS, a pilot project would be beneficial to the public in allowing more efficient processing of divorce cases involving minor children;

NOW, THEREFORE, it is ORDERED that the Family Law Magistrates are authorized to hear and dispose of all elements of a divorce action with children when both parties consent, subject to the Project Rules enumerated below, which shall govern the pilot project.

#### **PROJECT RULES FOR THE FAMILY LAW MAGISTRATE PILOT PROJECT AUTHORIZED BY 4 M.R.S § 183(4)**

As contemplated by Chapter XIII of the Maine Rules of Civil Procedure, Family Law Magistrates sitting in specified locations identified herein may, as part of a pilot project, exercise jurisdiction to hear and to dispose of all elements of a divorce action with children when both parties consent.

#### **PILOT PROJECT RULES:**

1. **Purpose of Pilot Project Rules:** These rules govern Family Law Magistrates' jurisdiction to hear and to dispose of all elements of a divorce action with children when both parties consent.
2. **Scope of Pilot Project:** Family Law Magistrates sitting in all State of Maine District Courts are authorized to hear and to dispose of all elements of a parental rights and responsibilities action and/or divorce action with children in which only issues related to the children remain contested, when both parties consent. The Family Law Magistrate must first determine that it is reasonably likely that the hearing can be completed within 3 hours.

**3. Procedure:**

- a. **Written Request.** If both parties agree, they may jointly request in writing that a Family Law Magistrate hear and dispose of all elements of their parental rights and responsibilities or divorce action with children. The parties must certify that the final hearing can be completed in 3 hours or less. The parties shall submit their written request on the form appended hereto as Form A. Neither party shall file such a request unless the other party is in agreement and has signed the form. This shall be the exclusive means of submitting a request.
  
  - b. **Timing.** The parties may submit a written request only at the following times:
    - (i) With a certificate in lieu of case management conference filed pursuant to Rule 110 A(b)(3)(B);
    - (ii) At the initial case management conference, provided that the magistrate has waived mediation for good cause shown;
    - (iii) At or before a previously scheduled status conference, pretrial hearing, or other hearing (not mediation); or
    - (iv) When or after the case is sent to the trailing docket.
  
  - c. **Review by Magistrate.** Upon receipt of the completed form by the court, the Family Law Magistrate shall review the filing and determine whether it is reasonably likely that the hearing can be completed within 3 hours, and determine whether judicial resources and schedules can accommodate the requested hearing. If so, the clerk may schedule a contested hearing not to exceed 3 hours before a Family Law Magistrate. If the Family Law Magistrate determines that it is not reasonably likely that the hearing can be completed within 3 hours, the case shall be placed on the trailing docket.
4. **Appeals:** All appeals from or objections to final orders issued by a Family Law Magistrate pursuant to the Pilot Project shall be governed by Rule 118 of the Maine Rules of Civil Procedure.
5. **Miscellaneous:** Matters not otherwise addressed in these project rules shall be governed by Chapter XIII of the Maine Rules of Civil Procedure.

For the Court,

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LEIGH I. SAUFLEY  
Chief Justice  
Maine Supreme Judicial Court

FORM A TO APPENDIX A TO JB-14-\_\_\_

STATE OF MAINE

District Court

Location \_\_\_\_\_

Docket No. \_\_\_\_\_

\_\_\_\_\_ Plaintiff

REQUEST FOR FINAL HEARING  
(DIVORCE WITH CHILDREN ONLY)

v.

\_\_\_\_\_ Defendant

- 1. Request for final hearing.** The undersigned parties request a final hearing before a Family Law Magistrate on all contested issues in this divorce.
- 2. Pilot Project authority.** This matter is currently pending in the following District Court *(Check the appropriate box; if your case is in a different court, you may not use this form):*

- |                                       |                                    |                                     |                                    |
|---------------------------------------|------------------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> Augusta      | <input type="checkbox"/> Bangor    | <input type="checkbox"/> Bridgton   | <input type="checkbox"/> Caribou   |
| <input type="checkbox"/> Dover        | <input type="checkbox"/> Ellsworth | <input type="checkbox"/> Farmington | <input type="checkbox"/> Fort Kent |
| <input type="checkbox"/> Houlton      | <input type="checkbox"/> Lewiston  | <input type="checkbox"/> Newport    | <input type="checkbox"/> Portland  |
| <input type="checkbox"/> Presque Isle | <input type="checkbox"/> Rumford   | <input type="checkbox"/> Skowhegan  | <input type="checkbox"/> So Paris  |
| <input type="checkbox"/> York         |                                    |                                     |                                    |

- 3. Timing of request.** *(Please check the appropriate box.)*

- This request is accompanied by a Certificate in Lieu of Case Management Conference
- This matter has previously been scheduled for a pretrial, status, or other conference to take place more than 5 business days from today, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time). The parties hereby request that this court event be cancelled and that the matter immediately be set for final, contested hearing; **or**
- This matter has been assigned to the trailing list.

- 4. Certifications.** We, the parties in this divorce, certify that discovery is complete and that a contested hearing in this matter can be completed in \_\_\_\_\_ hour(s) *(no more than 3 hours)*.

We understand that, if the Family Law Magistrate does not believe it is reasonably likely that the hearing can be completed in less than 3 hours, the case will be placed on the trailing list and the final hearing will be conducted by a judge unless child support is the only contested issue, in which event the case may still be heard by the Family Law Magistrate.

5. **Pre-Trial Order.** (Please check the appropriate box.)

- A Pre-trial Order was entered on \_\_\_\_\_ and remains in effect; or
- No Pre-trial Order currently governs this case and we, the parties, stipulate to the following pre-trial order.

A. Contested Issues (check all that apply)

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Parental Rights & Responsibilities  | <input type="checkbox"/> Primary Residence | <input type="checkbox"/> Rights of Contact  |
| <input type="checkbox"/> Actual or Imputed Income of a party | <input type="checkbox"/> Child Support     | <input type="checkbox"/> Spousal Support    |
| <input type="checkbox"/> Marital vs. Non-marital property    | <input type="checkbox"/> Real Estate       | <input type="checkbox"/> Support Arrearage  |
| <input type="checkbox"/> Pension or Benefits                 | <input type="checkbox"/> Personal Property | <input type="checkbox"/> Allocation of Debt |
| <input type="checkbox"/> Guardian ad litem fees              | <input type="checkbox"/> Paternity         | <input type="checkbox"/> Medical Insurance  |
| <input type="checkbox"/> Uninsured Medical Expenses          | <input type="checkbox"/> Attorney's Fees   | <input type="checkbox"/> Tax Exemption      |
| <input type="checkbox"/> Other: _____                        |  |   |

B. Exhibits, Child Support Affidavits, and Financial Statements: Seven days before the final hearing, the parties shall exchange copies of exhibits and shall exchange and file with the court updated child support affidavits and financial statements.

C. Witnesses:

Plaintiff's Witnesses:

Defendant's Witnesses:

GAL's Witnesses:

_____	_____	_____
_____	_____	_____
_____	_____	_____

D. Real Estate: (Choose one):

- Neither party has any interest in real estate: or
- Plaintiff and/or Defendant (circle one or both) has an interest in real estate and will file a Certificate Regarding Real Estate (form FM-056) with the court at least 3 days prior to the final hearing.

6. **Right to hearing before judge; Appeal:** We understand that we have the right to have a contested hearing before a Judge and we are waiving that right. We also understand the final order issued by the Family Law Magistrate will be subject to appeal by first filing an objection in the District Court within 21 days of the entry of the order, and the order will ultimately be subject to appellate review in the same manner as any final order issued by a District Court Judge.

Date: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant



# APPENDIX E

## PROPOSED FORMS

<b>FDTF Proposed Combined Motion for P/J Relief .....</b>	<b>E1</b>
<b>FDTF Proposed No Kids Scheduling Order.....</b>	<b>E4</b>
<b>FDTF Proposed Notice of Final Hearing.....</b>	<b>E5</b>
<b>FDTF Proposed Checklist for Final Hearing.....</b>	<b>E6</b>
<b>FDTF Proposed Real Estate Checklist.....</b>	<b>E7</b>

FDTF Proposed Combined Motion for P/J Relief

STATE OF MAINE

SUPERIOR COURT

DISTRICT COURT

\_\_\_\_\_, ss.

Location \_\_\_\_\_

Docket No. \_\_\_\_\_

Docket No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

POST-JUDGMENT MOTION

to Modify

to Enforce

to Modify and Enforce

Check (✓) one of the three options above

v.

Child Support Only

Check (✓) if only Child Support is involved

\_\_\_\_\_  
Defendant

M.R. Civ. P 110(A)(b)(6)(B) and 110B(d)  
(19-A M.R.S. § 1657 & 19-A M.R.S. § 2009)

1. I am the  Plaintiff  Defendant in this case.

Plaintiff now resides in (town) \_\_\_\_\_, (county) \_\_\_\_\_, (state) \_\_\_\_\_.

Defendant now resides in (town) \_\_\_\_\_, (county) \_\_\_\_\_, (state) \_\_\_\_\_, **OR**

Residence of the other party is unknown and I have used reasonable efforts to locate the other party.

2. Circumstances have changed substantially since the Court's Judgment or Order in this case, dated \_\_\_\_\_.

The changes concern the following issues (Check ✓ the boxes that apply):

Parental Rights and Responsibilities

Primary Physical Residence of the minor child(ren), file and exchange FM-050

Rights of contact or visitation with the minor child(ren)

Child Support, file and exchange FM-050, Child Support Affidavit

Spousal Support (Alimony)

Other: \_\_\_\_\_

3. A.  The changes in circumstances are: (Describe the substantial changes that have occurred since the Judgment or Order and why you believe these changes should cause the court to change the judgment or order.)

\_\_\_\_\_  
\_\_\_\_\_  
(If more room is needed, you may continue this statement on a separate sheet of paper which should be signed under oath and attached to this motion)

**OR**

B.  I do not have to show a change in circumstance because:

I am seeking **only** to enforce, and not to modify, a family matters order.

I am seeking **only** to modify child support, and a child support order was not issued or modified within the last three years. 19-A M.R.S. § 2009(3)

The order I seek to modify was entered in a paternity action in which I did not appear. 19-A M.R.S. § 1565(2).

4. (If this motion involves any issues relating to the children in this case, complete paragraphs A thru E below. If not, skip ahead to paragraph 5.)

A. Plaintiff and Defendant are the parents of the following child(ren):

<i>Name</i>	<i>Date of Birth</i>	<i>Present Address</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. List below where and with whom the child(ren) have lived within the **past 5 years**.

<i>Name and present address of person child(ren) lived with</i>	<i>Dates child(ren) lived with that person</i>	<i>Town and State where child(ren) lived with that person</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. Plaintiff has not been involved in any way in, and has no information about, another court case in any state concerning the custody of the child(ren), except as follows:

- Protection from Abuse: State/Court/Docket No.: \_\_\_\_\_
- Other (*describe what kind of other case*) \_\_\_\_\_

D. No one other than the parties has physical custody of the child(ren), or claims to have custody or visitation rights with respect to the child(ren), except as follows: \_\_\_\_\_

E. (Check  $\checkmark$  all of the boxes that apply)

- (1) No public assistance benefits have ever been received for the child(ren).
- (2) Public assistance benefits have been in the past, are now, or will be received for the child(ren).
- (3) The Department of Health & Human Services **has** been contacted to review, change or enforce a child support order regarding the child(ren).

If you check box 2 or 3, you must send a copy of this motion to the Department of Health & Human Services, Support Enforcement Division, Central Office Supervisor, 11 State House Station, Augusta, ME 04333-0011.

**WHEREFORE**, I ask the Court to modify/enforce those portions of the judgment or order as requested below (Check  $\checkmark$  all of the boxes that apply)

(if you seek to **modify** the order) I ask the Court to make the following changes to the Judgment/Order:

\_\_\_\_\_  
\_\_\_\_\_

(If you seek a change in the primary residence or a child support for any child, you must attach a completed child support affidavit (FM-050) and you may be ordered to submit a child support worksheet (FM-040).)

(if you seek to **enforce** the order) I ask the Court to find that the other party has failed or refused to obey the Court's Judgment or Order and enter an order requiring the other party to permanently stop disobeying the Judgment or Order in this case (Check  $\checkmark$  all of the boxes that apply):

Obey and comply with the Judgment or Order by requiring the party to do the following: \_\_\_\_\_

Other (*You must be specific about any other relief you are requesting*): \_\_\_\_\_  
\_\_\_\_\_

- order the other party to pay my court costs, reasonable attorney's fees; and
- grant such other relief as the Court deems just and proper.

Date: \_\_\_\_\_

Signature of  Plaintiff  Defendant

Address of Attorney:

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

**STATE OF MAINE**

\_\_\_\_\_ County

Personally appeared the above named  Plaintiff  Defendant \_\_\_\_\_  
and made Oath that the foregoing statements, including those in any attached sheet(s), are true.

Before me,

Date: \_\_\_\_\_

\_\_\_\_\_  
*Attorney at Law/Notary Public/Deputy Clerk*

**FDTF Proposed No Kids Scheduling Order**

STATE OF MAINE

DISTRICT COURT

Location: \_\_\_\_\_

Docket No.: \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

\_\_\_\_\_, Defendant

**FAMILY MATTER  
SCHEDULING ORDER  
(No Minor Children)**

A Complaint and Answer/Entry of Appearance having been filed, the Court Orders as follows:

- 1. DISCOVERY DEADLINE:** Unless the Court orders otherwise for good cause shown, discovery shall be completed in this matter no later than 120 days from the date of this date, which is \_\_\_\_\_, 2014. Pursuant to the Maine Rules of Civil Procedure, discovery shall be initiated so as to enable the opposing party to serve a response within a period allowed by the Rules and before expiration of the discovery deadline. This means, in most cases, if you wish to serve discovery requests upon the opposing party you must do so a minimum of thirty-three days prior to the completion of discovery date or no later than \_\_\_\_\_, 2014. No extensions of the discovery period will be granted unless a request to extend such deadline is filed prior to the expiration of the deadline and the Court finds there is good cause for the extension. Attorneys may not assume that agreements to conduct discovery beyond this deadline will be accepted by the Court unless they are submitted in the form of a motion to extend the discovery deadline to the Court prior to the expiration of the discovery deadline and there is good cause for the extension.
- 2. EXPERT WITNESSES:** Both parties shall designate any expert witnesses and provide Rule 26(b)(4) information within 60 days of the expiration of the discovery deadline. Cross designation of expert witnesses, if designated, shall be designated within 30 days and provide Rule 26(b)(4) information of the date of the opposing parties' designation.
- 3. FINANCIAL STATEMENTS:** Each party shall file a Rule 108(c) Financial Statement with the Court within 21 days of the date of this Order or \_\_\_\_\_, 2014. Unless a Certificate in Lieu of Financial Statement is filed with the Court and there is no dispute of the division of property, an award of spousal support or attorney's fees.
- 4. MEDIATION:** Unless otherwise ordered by the Court, mediation shall be held no later than 30 days after the expiration of the designation of expert witnesses deadline unless waived by court order.
- 5. PRETRIAL CONFERENCE:** The Court shall hold a Pretrial Conference \_\_\_\_\_, 2014 or earlier upon request of the parties. At such conference, the Court shall determine 1) the amount of time necessary for hearing, and 2) trial list or trial date for the case.
- 6. WITNESS AND EXHIBIT LISTS:** Within 30 days of the Pretrial Conference or no later than 14 days in advance of the Trial date, whichever is earlier, the parties shall exchange and file with the District Court their respective Witness Lists and Exhibit Lists. A copy of all exhibits shall be provided to the opposing party.
- 7. SANCTIONS:** Failure to comply with the deadlines as ordered may result in the imposition of sanctions.

The entry will be "Scheduling Order filed: Discovery deadline set, Pretrial Conference is set for \_\_\_\_\_."

***If you and the opposing party have reached an agreement on all issues, please call the court at (207) \_\_\_\_\_ and request a date for an uncontested hearing.***

**IMPORTANT WARNING:** You have the right to appear and be heard at all court events (trial, hearing, conference, mediation). If you fail to appear at any or all court events without good cause, action may be taken on your case even though you are not there. This means that the Court may, in your absence, enter an interim/temporary order, OR hold final hearing and enter a final default order or judgment regarding any or all of the issues in your case, including but not limited to spousal support/alimony, attorney fees, and distribution of marital and non-marital property (debt, real estate, personal property, vehicles, pension and retirement accounts, etc). The Court also has the option to dismiss any pleading that you have filed if you do not show up.

It is your responsibility to be sure that the Court has your correct address. Any change of address must be in writing and delivered to the Clerk's office.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk / Judge

**FDTF Proposed Notice of Final Hearing**

STATE OF MAINE

DISTRICT COURT  
Location: \_\_\_\_\_  
Docket No.: \_\_\_\_\_

\_\_\_\_\_, Plaintiff

v.

**NOTICE OF FINAL HEARING**  
(Pre-Judgment/Divorce/No Children)

\_\_\_\_\_, Defendant

A complaint for divorce was filed, and either no answer was filed or an answer was filed stating the divorce is uncontested.

An uncontested final divorce hearing is set for \_\_\_\_\_, 2014 at \_\_\_\_\_ (a.m./p.m.), in courtroom \_\_\_\_\_ before a Judge at the \_\_\_\_\_ District Court, \_\_\_\_\_ (court address). You must first report to the Clerk's Office and bring with you the completed Checklist For Uncontested Final Divorce Hearing (Without Children) (enclosed) and the items required therein. Once the Clerk determines your file is in order, you will be directed to appear in Courtroom \_\_\_\_\_ for your final divorce hearing.

**\*\*WARNING\*\***

If the Plaintiff fails to appear, the case will be dismissed. If the Defendant fails to appear, the Judge will hold a final hearing, and a default judgment will be entered. A parties failure to bring the material ordered may result in sanctions, including, but not limited to, entry of judgment, dismissal of the action, award of attorneys fees, or monetary sanctions, and/or such other sanctions as the Court deems appropriate, including sanctions authorized under Rule 16A, Maine Rules of Civil Procedure.

The Clerk shall mail copies of this Order to parties who have appeared or answered. This Order may be incorporated by reference on the docket.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk/Judge

**FDTF Proposed Checklist for Final Hearing**

STATE OF MAINE

DISTRICT COURT

Location : \_\_\_\_\_

Docket No.: \_\_\_\_\_

Plaintiff

vs.

Defendant

**CHECKLIST FOR UNCONTESTED  
FINAL DIVORCE HEARING**

Uncontested divorces are heard Monday through Thursday at 8:15 a.m. You must complete all applicable items listed below, sign to verify they are completed, and present this form to the clerk. A checkmark is a representation that the required obligation is completed. The clerk will not release a case for an uncontested hearing unless all required items are completed, checked, and on file.

- Sixty (60) days has passed since the SUMMONS and COMPLAINT were served.
- A FINANCIAL STATEMENT or CERTIFICATE IN LIEU OF FINANCIAL STATEMENT is properly completed and signed by both parties according to Rule SO(c).
- If the other party is not present, a Federal Affidavit or Residency is completed and filed.
- If the other party has entered his/her appearance, you must provide proof that you notified the other party of the date, time and place of this hearing by (1) providing a copy of a letter delivered or mailed to the other party at their last known address no less than ten (10) days before the hearing, or (2) filing a signed statement by the other party agreeing to an uncontested hearing on that date.
- If the parties have reached an agreement, the agreement should be reduced to writing, signed by both parties, and the original filed with the Court.
- If either party owns or has any interest in real estate, **regardless of any agreement as to the ownership or division of the real estate**, a CERTIFICATE CONCERNING REAL ESTATE must be completed including the Book and Page in the Registry of Deeds that describes the real estate.
- If any attorney represents either party, a proposed DIVORCED JUDGMENT must be prepared. If real estate is involved, the proposed judgment must include language required by 19-A M.R.S.A. Section 953(5).

DATE: \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF/DEFENDANT/ATTORNEY

## FDTF Proposed Real Estate Checklist

### REAL ESTATE CHECKLIST

Address: \_\_\_\_\_

County: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_

Title: One party \_\_\_\_\_

Both parties     Joint tenants  
                          Tenants in common

Fair Market Value \_\_\_\_\_

Encumbrances (Mortgage, liens)

Bank or lienholder: \_\_\_\_\_

Amount: \_\_\_\_\_

Named debtor(s): \_\_\_\_\_

### DISPOSITION ALTERNATIVES

#### A. Real Estate Awarded to Party.

1. The real estate is awarded to o Plaintiff o Defendant, who shall be solely responsible for the payment of any and all debts, encumbrances, costs or expenses, relating to the real estate, and who shall hold the other party harmless therefrom.
2. o Plaintiff o Defendant shall be required to refinance the real estate within \_\_\_\_\_(months)(years) to remove the other party from liability.
3. For his/her interest in the real estate, o Plaintiff o Defendant shall pay to o Plaintiff o Defendant, the following: \$ \_\_\_\_\_. That amount is payable as follows:

- Without interest
- With interest at the rate of \_\_\_\_%
- In full
- In monthly installments of \_\_\_\_\_
- At the time of refinancing
- At the time of re-marriage
- At the time of sale

- Within \_\_\_\_ (months) (years)
  - When the youngest child graduates from high school
  - When the obligation to pay child support terminates
  - Other: \_\_\_\_\_
- \_\_\_\_\_

#### B. Real Estate to be Sold.

1. To parties as o Tenants in Common or o Joint Tenants



2. Until the real estate is sold

Plaintiff  Defendant shall have the right to the exclusive possession of the real estate

Plaintiff  Defendant shall and shall be solely responsible for payment of the following items relating to the real estate:

- monthly installment payments for the mortgage(s)
- real estate taxes
- insurance
- utility charges
- other: \_\_\_\_\_

Repairs. Pending sale, the party who lives there shall be responsible for repairs up to \$\_\_\_\_\_. Repairs exceeding that amount will be paid as follows: \_\_\_\_\_% by Plaintiff, \_\_\_\_\_% by Defendant.

3. The real estate shall be sold (immediately) (when the following occurs:

\_\_\_\_\_  
\_\_\_\_\_).

4. When the real estate is required to be sold, it shall be listed for sale with a licensed real estate broker as follows:

at the following price: \$\_\_\_\_\_.

at a price agreed upon by the parties. If the parties are unable to so agree, the listing price shall be the fair market value of the real estate as then determined by an appraiser selected by the parties. If the parties are unable to agree on an appraiser, then each shall select and pay for an appraiser, those appraisers shall in turn select a third appraiser and the fair market value shall be determined by their majority opinion. The parties shall equally share the fees and costs of the third appraiser. The real estate shall be sold for the amount of the highest bona fide offer which equals or exceeds \_\_\_\_\_% of the fair market value.

5. The gross real estate sale proceeds shall be applied in the following order of priority

- To the outstanding balance(s) of the mortgage(s).
- To the outstanding Real Estate taxes, adjusted to the date of closing.
- To real Estate Commission(s) and customary closing costs
- Other: \_\_\_\_\_
- The remaining sale proceeds shall be divided, as follows: \_\_\_% to Plaintiff and \_\_\_% to Defendant.