

# **Civil Justice Reform for Maine's Courts**

## **The Problem**

After reviewing the careful and thorough studies of civil process challenges recently undertaken at a national level, we know the following:

Civil Process costs too much and takes too long.

- Disproportionate costs, delays, and complexity undermine public confidence.
- Nationwide 75% of civil judgments are less than \$5,200, but litigation expenses often greatly exceed that amount.

Private entities are filling the void with alternate forums, which

- Are not necessarily bound by existing law and
- Do not contribute to creating new precedent and may diminish common law.

One-size-fits-all standard scheduling with limited case management does not work.

- There is too much process in many simple cases.
- There is too little management in many complex cases.
- It takes too long to resolve or complete many civil cases.

## **The Goal**

Our goal is to improve access to justice through civil process improvements that create proportional civil process leading to the just, speedy, and inexpensive resolution of civil cases.

## **Finding Solutions—Recommendations of the National Conference of Chief Justices**

The Conference of Chief Justices recommends Differentiated Case Management (DCM) through court rules and procedures:

- Assertive court and judicial management and monitoring of cases
- Early identification of the issues for resolution
- Early identification of the actual date of trial or trial list
- Right-sizing the process to meet the individual needs of civil cases
- Proportional discovery based on the complexity and needs of each case

## **Benefits**

In other jurisdictions, early cost-effective resolution of cases has resulted in

- An increase in civil case filings and
- An increase in the number of litigants represented by an attorney.

## **Revising Maine's Civil Process**

Against this backdrop, Maine's Judicial Branch has been working on the development of a civil process that incorporates the principles of DCM.

The Judicial Branch Civil Process working group began with a review of all major DCM prototypes, including:

- National Center for State Courts information about DCM and the history of DCM,
- DCM frameworks in state and federal courts, and
- Innovative efforts in Maryland, New Jersey, Minnesota, New York, Texas, and Utah.

**Accordingly, the Maine Judicial Branch, with input from the Advisory Committee on Civil Rules and a number of judges and justices, developed a proposal that will apply Differentiated Case Management principles to all civil cases. These proposals are intended to apply to all civil cases, whether filed in the District or Superior Court. For clarity, any case in which a jury trial is timely requested will be managed, as always, in the Superior Court.**

### **Summary of Proposed Civil Rules Amendments**

The proposed amendments to the Maine Rules of Civil Procedure are designed to provide for effective, proportional, differentiated judicial management of civil cases in Maine’s state courts. Proportionality includes two goals:

**1. To provide differentiated processes for civil cases of different types.**

In pursuit of the first goal, the proposed rules provide for cases in which a process is already defined by statutes, rules, and orders of the court (Track A cases) to follow the established processes. Examples of those cases include appeals filed pursuant to Rule 80B or 80C. A single judge or justice is assigned to manage such cases only if the case requires close judicial case management. *See Proposed M.R. Civ. P. 16.* Other than attention to timely case management, very few changes are proposed for these cases.

**2. To ensure, through individualized case management, that each matter is scheduled and proceeds in a manner that is proportional to the needs of the specific case, regardless of the court in which the case was commenced.**

In pursuit of the second goal, the rules provide for all other civil cases—whether brought in the District Court or the Superior Court—to follow either

- A standard track (Track B) or
- A complex track (Track C), which provides for additional judicial case management and more expansive deadlines and presumptive limits during the discovery process.

*See Proposed M.R. Civ. P. 16.*

- In these cases, *a judge or justice would be assigned immediately* to determine the appropriate track and manage each case. *See Proposed M.R. Civ. P. 16.*

- An *initial individualized scheduling order* would be issued that would anticipate the needs of the case and prospectively assign the case to a trial date or trial list. *See* Proposed M.R. Civ. P. 16.
- The parties would be required to make *automatic initial disclosures of information specifically identified in the rule* to accelerate the sharing of information. *See* Proposed M.R. Civ. P. 26A.
- To ensure efficiency and individualized case management during discovery, the rules would place *differentiated presumptive limits on the scope and duration of discovery* for Track B and Track C cases. *See* Proposed M.R. Civ. P. 26B, 30, 33, 34, 36.
  - A court would be authorized to order shorter or narrower discovery—below the presumptive limits—if a case did not require extensive discovery. *See* Proposed M.R. Civ. P. 26B.
  - A court could order that discovery exceed the limits, however, only if one or more of the parties demonstrated that the discovery requested was proportional to the needs of the case. *See* Proposed M.R. Civ. P. 26B.

The amendments in general are designed to prevent pretrial process from creating uncertainty about when trial will, if necessary, be held. To that end:

- Alternative dispute resolution must be held more quickly, *see* Proposed M.R. Civ. P. 16B;
- Exemptions to mandatory ADR are expanded, *see* Proposed M.R. Civ. P. 16B;
- Jury trial demands are required earlier in the process, *see* Proposed M.R. Civ. P. 38, 76C;
- Because time frames will be set at the beginning of each case, with an opportunity for additional input from the parties, continuances are available only in exceptional circumstances, *see* Proposed M.R. Civ. P. 40; and
- The schedule for summary judgment motions is expedited, *see* Proposed M.R. Civ. P. 56.

Although the amendments may seem extensive, the changes they would effectuate create an efficient and straightforward process for civil cases, as shown in the flowchart and summary of amended limitations on discovery, summary judgment, and jury trial demands included with the proposal.

We now seek broader public input on the proposals that have been developed to provide process improvement in civil cases in Maine’s state courts.

We invite you to submit comments, proposals, and input addressed to Matthew Pollack, Executive Clerk, Maine Supreme Judicial Court, either (1) by email to [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov), with any comments submitted in an attachment to be supplied in portable document format (.pdf) or (2) in hard copy delivered to:

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