



October 2, 2018

VIA ELECTRONIC MAIL

Matthew Pollack
Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04112-0368

Re: Comments to Proposed Amendments

Dear Mr. Pollack,

We have reviewed the proposed amendments to the Maine Rules of Civil Procedure (“RCP”) out for comment until October 5, 2018, and write to bring the Court’s attention to a few issues arising therein.

First, we request clarification as to how the proposed amendments will be applied to existing cases. The Court has proposed major changes to RCP 16 and 16A regarding differentiated case management, as well as changing most deadlines to 7 day increments. If the proposed amendments are approved, for example, will cases commenced before the effective date be assigned to a case management track as set forth in amended RCP 16? Or will they continue to be governed by the rules prior to the amendments? In order to prevent confusion, we respectfully suggest that the amended rules apply only to cases commenced on or after the effective date of the amendments.

Second, we note that we have concerns regarding the following specific proposed amendments:

RCP 14

Proposed RCP 14 states that “[t]he notice of removal must be filed within the time for serving the answer to the third-party complaint.” The proposed amendments to RCP 12(a) provide that an answer is due 21 days after the service of the summons and complaint, and thus it would appear that for third-party complaints, the notice of removal must be filed within 21 days after service of the summons and third-party complaint.

We note that 28 USC 1446 requires a notice of removal to be filed within 30 days of receipt by or service on defendant of the initial pleading or summons, whichever period is shorter. We respectfully suggest that the proposed amendment regarding removal be either deleted from RCP 14, or changed to a 30 day period to be consistent with the 28 USC 1446 removal requirement.

RCP 56

Proposed RCP 56(f)(1) provides a deadline to file an opposing memorandum to a motion for summary judgment, stating in part: "A party opposing the motion must, no later than 21 days after the motion for summary judgment has been filed, file a memorandum opposing the moving party's motion"

Subsections (f)(2) and (f)(3) require that the opposing party create an opposing statement of facts and statement of additional undisputed material facts. However, no specific deadline is set for these documents. Does the Court intend that they be filed together with the opposing memorandum? If so, we propose that subsection (f) be revised to first set forth the deadline to file the opposition in general (21 days after the motion for summary judgment is filed) and then list the documents that make up the opposition, i.e., the memorandum, opposing statement of facts, and statement of additional undisputed material facts, as well as the requirements for each of those documents. This would also be more consistent with the rest of the rule, as proposed RCP 56(g) re the reply to the opposition is also set up this way.

RCP 4B, 30, 32 & 53

Currently, there are no proposed amendments to RCP 4B(c), which sets a 30 day deadline for trustee process to be served, or to RCP 32(d)(3)(C), which sets a 5 day deadline to object to the last questions authorized under RCP 31.

Further, while there is a proposed amendment to the language of RCP 30(c)(5), this subsection also sets a 3 day deadline to object to the taking of a deposition re the recording method. In addition, there is a proposed amendment to RCP 53(e)(2), but RCP 53(e)(5) sets a 5 day deadline for the party to make a motion for referee to amend its report or make additional findings or recommendations, as well as a 10 day deadline to serve objections after filing of a supplemental report. These deadlines have not been amended.

As one of the stated purposes of the proposed amendments is to change the deadlines to increments of 7, should the above rules also be amended to change the time periods to use 7 day increments?

Thank you for your time and consideration of these comments.

Sincerely,



Eleni Blumenfeld-James

Rules Attorney

eleni.blumenfeld-james@aderant.com