

Maine Association of Mediators' Comments to Proposed M.R. Civ. P. 16B Alternative Dispute Resolution

The Maine Association of Mediators ("MAM") makes the following comments to the proposed amendment to M.R. Civ. P. 16B:

- 1) MAM mediators who regularly do rule 16B mediations generally find that the 120-day time limit to conduct mediations is often not long enough to allow the parties to have a complete enough exchange of information for the mediation to be productive. Even when paper discovery is conducted promptly, it often reveals the need for additional information to be obtained before depositions necessary to case evaluation can be conducted. Depositions following paper discovery can reveal additional documents and witness testimony that need to be obtained and parties that need to be involved in the litigation before the parties are ready for mediation. The consensus among MAM mediators who regularly do rule 16 B mediation is that the 180-day time allowed under the existing rule by agreement is more realistic and effective getting cases resolved. Mediations that have been scheduled to meet the 120 day time limit are more apt to need to be rescheduled or fail because the mediation is premature. Based upon that experience, it is expected that shortening the time period will result in numerous extension requests to the court and, where no extension has been obtained, a decrease in the mediation success rate. Therefore, MAM proposes that ADR not be held more quickly as would be required of the proposed amendment and that the time limit to conduct mediations be 180 days from the scheduling order.
- 2) MAM proposes that the Rule 16B(b) (4) exemption for personal injury cases not be changed to increase the \$30,000 damages limit to \$50,000. Many cases in that range of damages settle at mediation and a significant number of them may not settle if exempted. The proposed change could therefore significantly increase court backlog and the time that takes cases to get to trial, which would be inconsistent with the purpose of the Proposed Amendments to achieve speedy resolution.
- 3) MAM supports the proposed change to Rule 16B (f)(iv) to change the language from "appropriate" to "full" settlement authority and proposes that the same change be made to Rule 16B (f)(ii).

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