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October 5, 2018

VIA E-MAIL

Matthew Pollack, Esquire  
Clerk of the Law Court  
P.O. Box 368  
Portland, ME 04112

Re: Draft Proposed Amendments to the Maine Rules of Civil Procedure (Proposed Implementation of Civil Justice Reform through Differentiated Case Management)

Dear Mr. Pollack:

I have represented creditors, as well as others, in the courts of the State of Maine since I became licensed to practice as an attorney in Maine 1981 and am a member of the Foreclosure Division Commission (the "Commission") established earlier this year by the Supreme Judicial Court. In my capacity as a creditors' attorney, as well as a co-author of 14 M.R.S.A. § 7071, I have several comments on the above-captioned draft Amendments as follows:

A. Personal Property Recovery Actions

1. Proposed Rule 5(h)(2) refers to "personal property recovery actions". Presumably, this is intended to be a reference to an action to recover possession of personal property pursuant to 14 M.R.S.A. § 7071, which can be a summary proceeding, as opposed to a reference to a replevin case, which is also an action to recover personal property. To clarify, this phrase in Proposed Rule 5 (h)(2) should be changed to read "personal property recovery actions pursuant to 14 M.R.S.A. § 7071". A similar change should be made to the listing of Track A Superior Court actions in the Civil Case Information Sheet, with the word "Appeal" ("Appeal" should be added to the listing of "Forcible Entry and Detainer Action – Eviction" on that sheet as well).

~ Over 60 Years of Service ~

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2. Proposed Rule 16(a)(1) lists certain specific actions where are presumed to be Track A cases. These include forcible entry and retainer (“FED”) actions, which are not otherwise mentioned in the District Court actions listed on the Civil Case Information Sheet. Actions under § 7071 (“§ 7071 Actions”) may be brought as either summary or plenary actions. Section 7071 Actions, if brought as a summary proceedings, were intended to have many of the same procedural features of FED cases, whereas it was intended that plenary § 7071 proceedings would be subject to the normal Rules of Civil Procedure and would not be handled on an expedited basis. Compare § 7071(2) with § 7071(9). Section 7071 Actions are also not included in the listing of District Court actions on the Information Sheet. As a result, it would make a great deal of sense to add “summary personal property recovery actions pursuant to 14 M.R.S.A. § 7071” to the explicit list of actions in this Proposed Rule.

3. I file many § 7071 Actions on behalf of clients who seek to repossess collateral, primarily motor vehicles. In several instances, court clerks have asked whether these were being brought as summary or plenary actions. Additionally, plenary actions should be treated for tracking purposes as ordinary civil actions, and should probably be listed as presumptive Track B actions on the Civil Case Information Sheet. This will allow court clerks to easily determine if the action is being brought on a plenary basis and will also indicate to the parties into what track the case will ordinarily be placed.

4. Proposed Rule 16(b)(1)(C), dealing with case assignments, references FED appeals, but does not list appeals of § 7071 Actions. Since the procedure for appeals of summary § 7071 District Court decisions was intended, to the extent applicable, to mirror that for FED appeals, “Appeals in summary personal property recovery actions pursuant to 14 M.R.S.A. § 7071” should be added to that subsection.

5. Proposed Rule 16B(a)(1) exempts FED actions from the ADR requirements of that Rule. Summary § 7071 Actions are intended to be handled as summary proceedings and should be exempt from the ADR requirements, particularly since, as in FED actions, trial will ordinarily have been held and the proceeding completed by the time that the ADR deadlines are reached in a summary § 7071 Action. Accordingly, Proposed Rule 16B(1) should be modified to add “summary personal property recovery actions pursuant to 14 M.R.S.A. § 7071”.

B. Proposed Rule 15

Proposed Rule 15 provides that a party may amend a pleading without court permission only if this can be done more than 63 days before a scheduled trial in cases where no responsive pleading is required. This effectively would cut off any ability to amend a complaint in § 7071 Actions which are summary in nature, as well as in FED actions, since the initial hearing in those cases is the trial, which is can be held as soon as 7 days after the summons and complaint is

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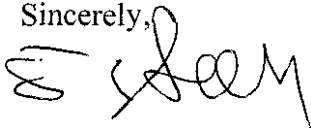
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served and in almost no instance is held 63 days after such service. It would be preferable to provide that in such actions the complaint could be amended without the necessity of court approval if the amended complaint is served upon the defendants at least 7 days prior to the return date set forth in the summons. This would give the defendants the same minimum amount of time to react to the amended complaint as they would have had with respect to the original complaint.

C. Collection Actions

1. Proposed Rule 16(a)(1) provides that “collection actions” will presumptively be handled as Track A cases without defining that term. Proposed Rule 80N initially states that a subset of “collection actions”, that is, those which seek to collect credit card and student loans, as well as all collection actions brought by debt collectors, are subject to that Rule. See Proposed Rule 80N(a). Although entitled “Commencement of a Credit Card, Student Loan, or Debt Buyer Collection Action”, Proposed Rule 80N(b) goes on to state that a “collection action” (without modifier) is commenced pursuant to that Rule. Although it is clear overall that Proposed Rule 80N is intended to only apply to the referenced subset of collection actions, this inconsistency in terminology, plus the lack of a definition of the unmodified term “collection action” makes the scope of Proposed Rule 16(a)(1)’s reference to “collection action”. Presumably, the reference is intended to be only to those collection actions subject to Proposed Rule 80N, and, if this is the case, the phrase “collection actions” in Proposed Rule 16(a)(1) should be changed to “collection actions subject to Rule 80N”. If the scope of the term “collection actions” now used in Proposed Rule 16(a)(1) is intended to be broader than Rule 80N matters, then the term will need to be defined.

I appreciate all of the work that has been undertaken to prepare these Proposed Rules and hope that my comments have been helpful.

Sincerely,  


F. Bruce Sleeper