

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENTS TO
MAINE RULES OF CIVIL PROCEDURE

1. Rule 5(b) of the Maine Rules of Civil Procedure is amended to read as follows:

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service upon an attorney or upon a party may also be made by sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served. Written consent may be given by electronic means.

Advisory Note – _____ 2016

This amendment makes Rule 5(b) consistent with Federal Rule of Civil Procedure 5(b)(2)(E) in that it allows service by electronic means provided written consent is given. Written consent may be given by electronic means, and consent may be withdrawn at any time prior to service.

From Federal 2001 Advisory Committee Notes:

Parties are encouraged to specify the scope and duration of the consent. The specification should include at least the persons to whom service should be made, the appropriate address or location for such service—such as the e-mail address or facsimile machine number, and the format to be used for attachments. Service is effective upon transmission, which is effected when the sender does the last act that must be performed by the sender. Ordinarily the risk of non-receipt falls on the person being served, who has consented to this form of service. But the risk should not extend to situations in which the person attempting service learns that the attempted service in fact did not reach the person to be served. As with other modes of service, actual notice that the transmission was not received defeats the presumption of receipt that arises from the provision that service is complete on transmission. The person attempting service must either try again or show circumstances that justify dispensing with service.

2. Rule 6(c) of the Maine Rules of Civil Procedure is amended to read as follows:

(c) Additional Time After Service by Mail or Electronic Means. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or electronic means, 3 days shall be added to the prescribed period.

Advisory Note – _____ 2016

This amendment allows additional time to respond when service is made by electronic means pursuant to Rule 5(b).

3. Rule 12 of the Maine Rules of Civil Procedure is amended to read as follows:

**RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW
PRESENTED BY PLEADING OR MOTION—MOTION FOR JUDGMENT
ON PLEADINGS**

(a) When Presented. A defendant shall serve that defendant's answer within ~~20~~ 21 days after the service of the summons and complaint upon that defendant, unless the court directs otherwise when service of process is made

pursuant to an order of court under Rule 4(d) or 4(g), and provided that a defendant served pursuant to Rule 4(e), 4(f), or 4(j) outside the Continental United States or Canada may serve the answer at any time within ~~50~~ 49 days after such service. A party who is served with a pleading stating a cross-claim against that party shall serve an answer thereto within ~~20~~ 21 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within ~~20~~ 21 days after service of the answer or, if a reply is ordered by the court, within ~~20~~ 21 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ~~10~~ 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within ~~10~~ 14 days after the service of the more definite statement.

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(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~20~~ 21 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Advisory Note – _____ 2016

This amendment changes from 20 to 21 days the time allowed to serve a responsive pleading or move to strike. It makes these time limits consistent with Rule 7(c)(2) and Federal Rule of Civil Procedure 12. It also changes from 10 to 14 days the time allowed to file a responsive pleading after a court acts on a motion permitted under Rule 12. The changes to the stated timelines make the intervals measurable in weeks, such that the deadlines will more often fall on a weekday.

4. Rule 26 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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(f) Filing of Discovery.

(1) Unless otherwise ordered by the court, or necessary for use in the proceeding, the following discovery papers shall be served upon other parties but shall not be filed with the court: notices; written questions and transcripts of depositions; ~~prepared in accordance with Rule 5(f),~~ interrogatories; requests pursuant to Rules 34 and 36, and answers, objections and responses thereto; and expert designations shall be served upon other parties but shall not be filed with the court. Notification of the method and date on which discovery papers were served on the parties shall be prepared and served on the parties with the discovery papers but shall not be filed with the clerk. The party who has served notice of a deposition or has otherwise initiated discovery shall be responsible for preserving and ensuring the integrity of original transcripts and discovery papers for a period of two years after final judgment for use by the court or other parties.

(2) If depositions, interrogatories, requests or answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, or are necessary to a ruling on a motion, the complete original ~~of the~~ transcript of the discovery material to be used, ~~prepared in accordance with Rule 5(f),~~ shall be filed with the clerk 7 days prior to trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file with the memorandum required by Rule 7(b)(3) a list of specific citations to the parts on which the party relies. Discovery transcripts and materials thus filed with the court shall be returned to appropriate counsel after final disposition of the case.

Advisory Note – _____ 2016

This amendment deletes the references to Rule 5(f) in Rule 26(f)(1) and (2), adds expert designations to the list of discovery papers that shall not be filed with the court, and makes non-substantive formatting changes to Rule 26(f)(1).