

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

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

RULE 3. COMMENCEMENT OF ACTION

Except as otherwise provided in these rules, a civil action is commenced (1) by the service of a summons, ~~and~~ complaint, and notice of electronic service exemption, or (2) by filing a complaint with the court. When method (1) is used, the complaint must be filed with the court within 20 days after completion of service. When method (2) is used, the return of service shall be filed with the court within 90 days after the filing of the complaint. If the complaint or the return of service is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.

Advisory Note – June 2017

The amendment to Rule 3, together with amendments to Rules 4, 5(b), 11, and 101 of the Maine Rules of Civil Procedure, is part of a package of simultaneous amendments to require parties to civil actions to serve pleadings and other papers electronically upon one another following service of the summons and complaint under Rule 4.

A more detailed description of Electronic Service and the procedures for complying with its requirements, as well as opt-out procedures, is stated in the Advisory Note to Rule 5.

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

RULE 4. PROCESS

(a) Summons: Form. The summons shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address, including email address unless exempt under Rule 5, of the plaintiff's attorney, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(b) Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service, and a copy of the summons, ~~and of the complaint~~, and notice of electronic service exemption, for service upon the defendant.

The notice of electronic service exemption may be procured in blank from the clerk, shall instruct the parties on the requirements for Electronic Service under Rule 5 of these rules, and provide for either or both parties to opt out of delivery or receipt, or delivery and receipt, of pleadings and other papers by Electronic Service if either an attorney or an unrepresented party does not have and cannot reasonably acquire an electronic mail address or PDF conversion program, or if an unrepresented party represents that an exemption is necessary because the disclosure of the party's electronic mail address would jeopardize the health, safety or liberty of the party, a child of the party, or a member of the party's household. If the plaintiff or the plaintiff's attorney is exempt from part or all of the electronic service requirements under Rule 5, the notice of electronic service exemption served on the defendant shall be filled out by the plaintiff or the plaintiff's attorney.

(c) Service. Service of the summons, ~~and complaint~~, and notice of electronic service exemption may be made as follows:

(1) By mailing a copy of the summons, ~~and of the complaint~~, and notice of electronic service exemption (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to

the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service of the summons and complaint shall be made under paragraph (2) or (3) of this subdivision.

(2) By a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by some person specially appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this rule or by statute.

(d) Summons: Personal Service. The summons, ~~and~~ complaint, and notice of electronic service exemption shall be served together. Personal service within the state shall be made as follows:

(1) Upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made pursuant to subdivision (g) of this rule.

(2) Upon a minor, by delivering a copy of the summons, ~~and of the~~ complaint, and notice of electronic service exemption personally (a) to the minor and (b) also to the minor's guardian if the minor has one within the state, known to the plaintiff, and if not, then to the minor's father or mother or other person having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(3) Upon an incompetent person, by delivering a copy of the summons, ~~and of the~~ complaint, and notice of electronic service exemption personally (a) to the guardian of the incompetent person or a competent adult

member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court and (b) unless the court otherwise orders, also to the incompetent person.

(4) Upon a county, by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to one of the county commissioners or their clerk or the county treasurer.

(5) Upon a town, by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to the clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to the clerk, treasurer, or manager.

(7) Upon the United States, by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to the United States attorney for the district of Maine or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the United States District Court for the district of Maine and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given.

Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this rule.

Upon any other public corporation, by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a domestic private corporation (a) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any officer, director or general agent; or, if no such officer or agent be found, to any person in the actual employment of the corporation; or, if no such person be found, then pursuant to subdivision (g) of this Rule, provided that the plaintiff's attorney shall also send a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to the corporation by registered or certified mail, addressed to the corporation's principal office as reported on its latest annual return; or (b) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a corporation established under the laws of any other state or country (a) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or (b) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(10) Upon a partnership subject to suit in the partnership name in any action, and upon all partners whether within or without the state in any action on a claim arising out of partnership business, (a) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership within the state; or (b) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any agent, attorney in fact, or other person authorized by appointment or by statute to receive or accept service on

behalf of the partnership, provided that any further notice required by the statute shall also be given.

(11) Upon the State of Maine by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to the Attorney General of the State of Maine or one of the Attorney General's deputies, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action attacking the validity of an order of an officer or agency of the State of Maine not made a party, by also sending a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption by ordinary mail to such officer or agency. The provisions of Rule 4(f) relating to completion of service by mail shall here apply as appropriate.

(12) Upon an officer or agency of the State of Maine by the method prescribed by either paragraph (1) or (7) of this subdivision as appropriate, and by also sending a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption by ordinary mail to the Attorney General of the State of Maine.

(13) Upon all trustees of an express trust, whether within or without the state, in any action on a claim for relief against the trust, except an action by a beneficiary in that capacity, (a) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any trustee, or by leaving such copies at an office or place of business of the trust within the state; or (b) by delivering a copy of the summons, ~~and of the complaint,~~ and notice of electronic service exemption to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the trust, provided that any further notice required by the statute shall also be given.

(14) Upon another state of the United States, by the method prescribed by the law of that state for service of process upon it.

(e) Personal Service Outside State. A person who is subject to the jurisdiction of the courts of the state may be served with the summons and complaint outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time,

manner, and place of service. Such service has the same force and effect as personal service within the state.

(f) Service by Mail in Certain Actions.

(1) Outside State. Where service cannot, with due diligence, be made personally within the state, service of the summons, ~~and of the complaint,~~ and notice of electronic service exemption may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases: where the pleading demands a judgment that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state, or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to any property.

(2) Family Division Actions. Service of the summons, ~~and of the complaint,~~ and notice of electronic service exemption or a post-judgment motion may be made in an action pursuant to Chapter XIII of these Rules upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person, whether in or outside the state, by registered or certified mail, with restricted delivery and return receipt requested.

(3) Service Completion. Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary mail.

(g) Service by Alternate Means; Motion Required.

(1) *When Service May Be Made.* The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service (i) to be made by leaving a copy of the order authorizing service by alternate means, the summons, ~~and complaint,~~ and notice of electronic service exemption at the defendant's dwelling house or usual place of abode; or (ii) by publication unless a statute provides another

method of notice; or (iii) to be made electronically or by any other means not prohibited by law.

Any such motion shall be supported by (i) a draft, proposed order to provide the requested service by alternate means, and (ii) an affidavit showing that:

(A) The moving party has demonstrated due diligence in attempting to obtain personal service of process in a manner otherwise prescribed by Rule 4 or by applicable statute;

(B) The identity and/or physical location of the person to be served cannot reasonably be ascertained, or is ascertainable but it appears the person is evading process; and

(C) The requested method and manner of service is reasonably calculated to provide actual notice of the pendency of the action to the party to be served and is the most practical manner of effecting notice of the suit.

(2) *Contents of Order.* An order for service by alternate means shall include (i) a brief statement of the object of the action; (ii) if the action may affect any property or credits of the defendant described in subdivision (f) of this rule, a description of any such property or credits; (iii) the substance of the summons prescribed by subdivision (a) of this rule; and (iv) a finding by the court that the party seeking service by alternate means has met the requirements in subdivision (g)(1)(A)-(C) of this rule. If the order is one allowing service by publication pursuant to subsection (g)(1)(ii), it shall also direct its publication once a week for 3 successive weeks in a designated newspaper of general circulation in the county or municipality and state most reasonably calculated to provide actual notice of the pendency of the action to the party to be served; and the order shall also direct the mailing to the defendant, if the defendant's address is known, of a copy of the order as published. If the order is one allowing service by electronic or other alternate means pursuant to subsection (g)(1)(iii), it may include directives about adequate safeguards to be employed to assure that service can be authenticated and will be received intact, with all relevant documents and information.

(3) *Time of Publication or Delivery; When Service Complete.* When service is made by publication pursuant to subsection (g)(1)(ii), the first

publication of the summons shall be made within 20 days after the order is granted. Service by alternate means hereunder is complete on the twenty-first day after the first service or as provided in the court's order. The plaintiff shall file with the court an affidavit demonstrating that publication or compliance with the court's order has occurred.

(h) Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c)(1) of this rule, return shall be made by the plaintiff's attorney filing with the court the acknowledgment received pursuant to that paragraph. The attorney's filing of such proof of service with the court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a sheriff or the sheriff's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When service is to be effected upon a party in a foreign country, it is also sufficient if service of the summons, ~~and~~ complaint, and notice of electronic service exemption is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail

requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (h) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Advisory Note – June 2017

The amendments to Rule 4, together with amendments to Rules 3, 5(b), 11, and 101 of the Maine Rules of Civil Procedure, is part of a package of simultaneous amendments to require parties to civil actions to serve pleadings and other papers electronically upon one another following service the summons and complaint under Rule 4.

A more detailed description of Electronic Service and the procedures for complying with its requirements, as well as opt-out procedures, is set forth in the Advisory Note to the Rule 5 amendment.

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

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

...

(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. Except as otherwise provided in these rules, service of the documents described in subdivision (a) upon an attorney or upon an unrepresented party shall be made

(i) by delivering a copy to the attorney or to the unrepresented party; or

(ii) by Electronic Service to the last known electronic mail address provided to the court or, if no electronic mail address is known, mailing it to the last known regular mail address, or, if neither is known, by leaving it with the clerk of the court.

An attorney or unrepresented party who does not have and cannot reasonably acquire an electronic mail address or PDF conversion program, or an unrepresented party who represents that an exemption is necessary because the disclosure of the party's electronic mail address would jeopardize the health, safety or liberty of the party, a child of the party, or a member of the party's household, may complete service by regular mail, provided the first such service is accompanied by a signed notice of electronic service exemption served on the other parties, but not filed with the clerk. The party completing the form shall be responsible for preserving and ensuring the integrity of the original form for a period of two years after final judgment for use by the court or other parties.

“Electronic Service” means the electronic transmission of a pleading or document. Unless otherwise approved by the court, pleadings and other documents being transmitted electronically shall be sent or submitted as an attachment in portable document format (PDF), except that documents produced pursuant to rule 34 and the record of proceedings filed pursuant to Rules 80B or 80C are not required to be produced or transmitted in electronic format. Electronic service shall be complete when transmitted, presumed to have been received by the intended recipient, and shall have the same legal effect as an original paper document. If Electronic Service to the last known electronic mail address is returned as undeliverable, or the sender otherwise learns that it was not successfully delivered, service must then be made by regular mail. Service shall be complete upon the attempted Electronic Service for purposes of the sender meeting any time period and upon mailing for purposes of starting any time period.

Delivery of a copy within this rule means: handing it to the attorney or to the unrepresented party; or leaving it at the office of the attorney or of the unrepresented 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 regular mail is complete upon mailing.

Advisory Note - June 2017

The Court has amended Rule 5(b), together with simultaneous amendments to Rules 3, 4, 11, and 101 of the Maine Rules of Civil Procedure, to:

- require attorneys or unrepresented parties to civil actions to serve pleadings and other papers electronically upon one another following service of the summons and complaint under Rule 4;
- permit attorneys or unrepresented parties to opt out of electronic service if they lack the technology to participate;
- permit an unrepresented party to opt out of electronic service if the unrepresented party represents that an exemption is necessary because the disclosure of the party's electronic mail address would jeopardize the health, safety or liberty of the party, a child of the party, or a member of the party's household; and
- provide specific and simple notice to defendants and other parties, including unrepresented defendants and other parties, of electronic service requirements within the summons and complaint package by amending language in the summons form and by requiring service, together with the summons and complaint, of the notice of electronic service exemption.

The requirements and procedures of electronic service only pertain to the service of pleadings and documents by each party upon the other parties in a court action. Electronic service does not alter, affect or in any way relate to a party's filing requirements with any court or clerk's office.

The amendment to Rule 5(b) describes the procedures for complying with the requirements of electronic service, as well as opt-out procedures for

attorneys and unrepresented parties who do not have and cannot reasonably acquire an electronic mail address or a PDF document conversion program.

The amendment defines “Electronic Service” for pleadings and documents, and specifically excludes from its requirements documents produced pursuant to Rule 34 and the record of proceedings filed pursuant to Rules 80B and 80C. The Rule also clarifies that electronic service is complete when transmitted, that it is presumed to have been received by the intended recipient, and that pleadings and documents transmitted by electronic service shall have the same legal effect as an original paper document.

The Rule also provides that if electronic service is undeliverable or otherwise cannot be successfully delivered, service of a hardcopy of the pleading or document must then be made by regular mail. Service shall be deemed complete (i) upon the attempted electronic service for the purposes of the sender meeting any time period and (ii) upon mailing for the purposes of starting any time period.

4. Rule 11 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 11. SIGNING OF PLEADINGS AND MOTIONS; SANCTIONS

(a) Attorney Signature Required; Sanctions. Subject to subdivision (b), every pleading and motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney’s individual name, whose address including email address if required shall be stated. A party who is not represented by an attorney shall sign the party’s pleading or motion and state the party’s address including email address if required. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a representation by the signer that the signer has read the pleading or motion; that to the best of the signer’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or motion is not signed, it shall not be accepted for filing. If a pleading or motion is signed with intent to defeat the purpose of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a represented party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading or motion, including a reasonable attorney's fee.

Advisory Note – June 2017

The amendments to Rule 11, together with amendments to Rules 3, 4, 5(b) and 101 of the Maine Rules of Civil Procedure, is part of a package of simultaneous amendments to require parties to civil actions to serve pleadings and other papers electronically upon one another following service the summons and complaint under Rule 4.

A more detailed description of Electronic Service and the procedures for complying with its requirements, as well as opt-out procedures, is stated in the Advisory Note to Rule 5.

The requirements and procedures of electronic service only pertain to the service of pleadings and documents by each party upon the other parties in a court action. Electronic service does not alter, affect or in any way relate to a party's filing requirements with any court or clerk's office.

5. Rule 101(a) of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 101. COMMENCEMENT OF ACTION

(a) Filing. Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. Also, accompanying any complaint, petition, or motion for post-judgment relief shall be a notice of electronic service exemption. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

Advisory Note - June 2017

The amendment to Rule 101, together with amendments to Rules 3, 4, 5(b), and 11 of the Maine Rules of Civil Procedure, is part of a package of simultaneous amendments to require parties to civil actions to serve pleadings and other papers electronically upon one another following service the summons and complaint under Rule 4.

A more detailed description of Electronic Service and the procedures for complying with its requirements, as well as opt-out procedures, is stated in the Advisory Note to Rule 5.