

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

2020 Me. Rules 05

Effective: November 30, 2020

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of the amendments, Advisory Notes appear after the text of the amendments. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the Rule adopted by the Court.

1. Rule 130 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 130. PURPOSE, SCOPE, AND OTHER RULES

(a) Purpose and Scope. The Business and Consumer Docket Procedural Rules (referred to herein as the BCD Procedural Rules) are established to promote the purpose and goals of the Business and Consumer Docket (BCD) and to facilitate the proceedings of all cases placed on the BCD.

(1) *Statewide Docket; Management.* The BCD shall be a statewide docket ~~comprised~~ of selected actions involving business and/or consumer disputes, and shall be managed by judges or justices from either trial court designated by the Chief Justice of the Supreme Judicial Court.

(2) *Goals.* The goals of the BCD are to provide predictable judicial action in selected cases involving business and/or consumer disputes, avoid placing unnecessary burdens on the court and the litigants in such cases, keep litigation costs reasonable, and promote an effective and efficient process for resolving such disputes.

(3) *Eligibility for Transfer.* Cases that may be considered for transfer to the BCD include pending and new jury and nonjury civil actions and family matters that focus on a business dispute, in which (A) the principal claim

or claims involve matters of significance to the transactions, operations, or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity; and (B) the case requires specialized and differentiated judicial management.

(b) Integration with Other Rules. The BCD Procedural Rules supplement and modify other Maine Rules of Civil Procedure, including the Family Division rules, M.R. Civ. P. 100 et seq., and the Maine Rules of Electronic Court Systems. Unless modified by the BCD Procedural Rules, all other Maine Rules of Civil Procedure are applicable to cases on the BCD, consistent with the purpose and goals of the BCD.

Advisory Note – November 2020

Rule 130(a)(1) is amended to remove the word “comprised.”

Rule 130(b) is amended to refer to the Maine Rules of Electronic Court Systems.

2. Rule 131(c) of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 131. CASE FILING, TRANSFER, AND IDENTIFICATION

....

(c) Decision to Allow Transfer to BCD. The decision to accept or reject a case for transfer to the BCD shall be within the sole discretion of the BCD judge reviewing the transfer application. The decision shall be made summarily, without hearing, unless the BCD judge concludes that a hearing is necessary.

(1) *Transfer Orders are not Subject to Review or Appeal.* Parties shall not have the right to a review or appeal of decisions regarding the transfer of a case to or from the BCD.

(2) *Completion of Transfer to BCD.* ~~If a case is ordered transferred to the BCD, the case file shall be transferred forthwith from the originating court to the BCD. The transfer shall be effective when the order of transfer is~~

signed by the BCD judge. When a case is ordered transferred to the BCD, the transfer shall be effective when the order of transfer is signed by the BCD judge.

(A) When a case is ordered transferred to the BCD from a court in which the Electronic Filing System (EFS) has not been implemented, the case file shall be transferred to the BCD, converted to electronic format, and entered into the Case Management System. The filing parties may request return of original documents from the BCD pursuant to the Maine Rules of Electronic Court Systems.

(B) When a case is ordered transferred to the BCD from a court in which the EFS has been implemented, the clerk of the originating court shall comply with the case transfer protocols of the EFS and the Maine Rules of Electronic Court Systems and shall then notify the BCD of the transfer.

(3) *BCD Docket Number.* When a case is ordered transferred to the BCD, it shall be assigned a BCD docket number that will replace the docket number assigned to the case by the originating court.

Advisory Note – November 2020

Rule 131(c)(2) is amended to establish the process for completing the transfer of a case to the BCD depending on whether the court has implemented the Electronic Filing System (EFS).

3. Rule 133 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 133. DISCOVERY

(a) Presumptive Discovery Limits. Unless otherwise authorized by the provisions of the BCD scheduling order, each party may serve upon any other party no more than

(1) 30 interrogatories, including all subparts;

(2) 30 requests, including all subparts, for production of documents;

(3) 20 requests, including all subparts, for admissions; and

(4) 5 notices of deposition or subpoenas for deposition for persons other than experts.

~~(b) Discovery Dispute Conference Request. A moving party may request a Rule 26(g) conference through electronic communication that complies with Rule 138 without submitting a paper copy of the request. Electronic transmittal of the request constitutes a representation to the court, subject to Rule 11, that the moving party has complied with the requirements of Rule 26(g).~~

(eb) Confidentiality Orders. A party by motion or with the agreement of all parties may submit to the court a proposed order governing the production and use of confidential documents and information in the pending action. The party or parties may (1) draft their own order or (2) utilize or customize a draft confidentiality order from an approved BCD form.

The entry of a confidentiality order by the court does not limit the court's power to make orders concerning the disclosure of documents produced in discovery, filed with the court, or presented at trial, including whether and under what circumstances the document will retain its confidential designation.

Advisory Note – November 2020

Former Rule 133(b), which allowed a moving party to request a Rule 26(g) discovery dispute conference through email, has been eliminated because such a request will be submitted through the EFS.

Former Rule 133(c) is now Rule 133(b).

4. Rule 134 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 134. MOTION PRACTICE

(a) Motion Hearings. Unless otherwise ordered by the court, motions that do not require testimonial evidence shall be considered and decided by the court, without hearing or oral argument, based on the motion filings, the pleadings, admissible appropriate record evidence, the court's file, and memoranda.

(b) Summary Judgment Pre-filing Conference. Unless otherwise ordered by the court, any party proposing to move for summary judgment on any claim or issue shall notify the court of the intent to file the motion ~~through electronic communication~~ at least 14 days before the filing of the proposed motion. ~~Electronic transmittal of the notification shall comply with the BCD Procedural Rules, except that Rule 139(a)(2) does not apply.~~

If a summary judgment pre-filing conference was not scheduled pursuant to Rule 132(b), the court may schedule an in person or telephonic conference of counsel to discuss the proposed motion's parameters, including, but not limited to: the issue or claim to be addressed by the motion; the length of the statement of material facts and legal memoranda to be filed; possible stipulations to uncontested facts; the timing of the motion, opposition, and reply; and any other matter relevant to secure the just and speedy determination of the motion.

(c) Unopposed Motions for Enlargement of Deadlines. Unopposed motions pursuant to Rule 6(b)(1) that (a) do not expand the time for filing a jury trial demand or the completion of discovery, and (b) do not alter the dispositive motion deadline or the scheduled trial date, may be presented to the court ~~electronically~~ through a proposed order only. The proposed order shall state that all parties are aware of and do not oppose entry of the order. The presentation of an unopposed motion for the enlargement of deadlines does not mandate corresponding approval by the court.

~~Electronic transmittal of the order shall comply with the BCD Procedural Rules, except that Rule 139(a)(2) does not apply.~~ Transmittal of the proposed

order by an attorney or party constitutes a representation, subject to Rule 11, that all parties are aware of and do not oppose entry of the order.

Advisory Note – November 2020

Due to the adoption of the Maine Rules of Electronic Court Systems and the institution of the EFS, the provisions in Rule 134(b) and (c) regarding electronic transmittal have been removed.

5. Rule 138 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 138. ELECTRONIC COMMUNICATION

~~(a) General Communication. All electronic filing in the BCD must utilize the EFS. All other electronic communication with the BCD shall be through electronic mail (email), and directed to Business.Court@courts.maine.gov. (b) Case Communication. Electronic-mail sent to the BCD regarding a specific case should include only the case title and docket number in the subject line or heading, and. All communications with the BCD regarding a case shall be simultaneously copied to all other parties in the case. Unless requested by the court or authorized by the BCD Procedural Rules, parties and counsel shall not copy the court on electronic communications between or among parties and counsel.~~

~~(c) Counsel and Unrepresented Party Information Sheets. After acceptance to the BCD, (1) each represented party shall complete and electronically return to the clerk a Counsel Information Sheet, and (2) each unrepresented party shall complete and return to the clerk an Unrepresented Party Information Sheet. Electronic communication will be sent to counsel at the address listed in the Maine Bar Directory until otherwise modified by the Counsel Information Sheet.~~

~~(d) Electronic Mail Address. Unless alternative service is approved pursuant to Rule 140(d), it is the responsibility of all counsel and unrepresented parties to (1) ensure that their correct electronic mail addresses are operational and on file with the BCD, (2) timely monitor their electronic mail service for electronic service as provided in Rule 140, and (3) promptly notify the court of any change to their electronic mail addresses.~~

Advisory Note – November 2020

Rule 138 has been amended to require electronic filing in the BCD to be accomplished using the EFS, and all language providing otherwise has been removed.

6. Rule 139 of the Maine Rules of Civil Procedure is repealed.

Advisory Note – November 2020

Because the rules have been amended to require electronic filing in the BCD to be accomplished using the EFS, Rule 139 regarding electronic filing is repealed.

7. Rule 140 of the Maine Rules of Civil Procedure is repealed.

Advisory Note – November 2020

Because the rules have been amended to require electronic service in the BCD to be accomplished using the EFS, Rule 140 regarding electronic filing is repealed.

Dated: November 3, 2020

FOR THE COURT,*

_____/s/_____
ANDREW M. MEAD
Acting Chief Justice

ELLEN A. GORMAN
JOSEPH M. JABAR
THOMAS E. HUMPHREY
ANDREW M. HORTON
CATHERINE R. CONNORS
Associate Justices

* This Rule Adoption Order was approved after conference of the Court, all Justices concurring therein.