

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

2024 Me. Rules 02

Effective: February 27, 2024

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, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 126 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 126. TRANSFERS FROM PROBATE COURT WHEN A FAMILY MATTER OR A CHILD PROTECTION MATTER IS PENDING PROBATE MATTERS IN THE DISTRICT COURT

(a) District Court Jurisdiction.

(1) When the District Court Has Jurisdiction. Except as provided in subdivision (a)(2) of this Rule, the District Court has exclusive, continuing jurisdiction over actions for guardianship, adoption, change of name, or other matters involving custody or other parental rights with respect to a minor child brought under the Maine Uniform Probate Code, Title 18-C, under the following circumstances:

(A) If proceedings under the Maine Juvenile Code brought against the minor child are pending in the District Court;

(B) If proceedings involving custody or parental rights with respect to the minor child are pending in the District Court. Proceedings involving custody or parental rights include, but are not limited to:

(i) Adoption;

(ii) Divorce;

(iii) Parental rights and responsibilities;

(iv) Grandparents' rights;

(v) Child protection;

(vi) Change of name;

(vii) Guardianship;

(viii) Parentage; and

(ix) Termination of parental rights; or

(C) If the minor child is or was the subject of an order issued by the District Court:

(i) Terminating parental rights;

(ii) Appointing a guardian, including a permanency, emergency, or interim guardian;

(iii) Awarding parental rights to a third party; or

(iv) Granting an adoption.

(2) When the District Court Does Not Have Jurisdiction. The District Court does not have jurisdiction over actions for guardianship, adoption, change of name, or other actions under Title 18-C involving custody or other parental rights with respect to a minor child in either of the following circumstances:

(A) The Probate Court retains jurisdiction over an action under Title 18-C that would otherwise be within the jurisdiction of the District Court and may not transfer that matter to the District Court because:

(i) At the time the proceeding that would trigger District Court jurisdiction is initiated, the testimonial hearing on the Title 18-C action has concluded and the Probate Court has that matter under advisement; and

(ii) The Probate Court has not determined that the District Court is the more appropriate forum for the Title 18-C action; or

(B) The only proceedings pending in the District Court involving custody or other parental rights with respect to the minor child are protection from abuse or protection from harassment proceedings and no other grounds for District Court jurisdiction under subdivision (b)(1) of this Rule are met.

(3) Definition of "Pending." A case is "pending" in a court if a complaint, petition, or post-judgment motion has been filed and the final judgment or final order on that complaint, petition, or post-judgment motion has not yet been issued.

(b) Effect of District Court's Exercise of Jurisdiction.

(1) Once the District Court has exercised jurisdiction over guardianship, adoption, change of name, or other matters involving custody or other parental rights with respect to a minor child brought under Title 18-C, whether such proceeding was originally filed in the District Court or transferred from the Probate Court, the District Court has exclusive, continuing jurisdiction over any subsequent matter concerning the minor child pursuant to 4 M.R.S. § 152(5-A), except to the extent that the District Court's jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act, codified at chapter 58 of Title 19-A. Thereafter, any guardianship, adoption, change of name, or other actions under Title 18-C involving custody or other parental rights with respect to that minor child must be filed in the District Court.

(2) Once the District Court issues an order involving the minor child that (A) terminates parental rights; (B) appoints a guardian, including a permanency, emergency, or interim guardian; (C) awards parental rights to a third party; or (D) grants an adoption, the District Court has exclusive, continuing jurisdiction over any subsequent matter concerning the minor child pursuant to 4 M.R.S. § 152(5-A), except to the extent that the District Court's jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act. Thereafter, any guardianship, adoption, change of name, or other matters involving custody or other parental rights with respect to that minor child or those minor children must be filed in the District Court.

(c) Initial Filings in the District Court.

(1) Starting a Case. A probate code matter initially filed in the District Court shall be started pursuant to Rule 101.

(2) Required Forms. In addition to the petition or post-judgment motion, a filing party must file a completed Family and Probate Matters Summary Sheet and a Jurisdictional Affidavit.

(3) Case Management Conference. The parties will be notified of the date and time of the case management conference within 14 days after the filing of the proof of service of the petition. The conference will be scheduled no earlier than 21 days after the service of the petition unless a response is received before the 21-day period has passed.

(d) Transfer of Any Pending Matters in Probate Court. The District Court presiding over any ~~family matter or child protection~~ case involving a minor child under subdivision (a)(1)(A) or (B) of this Rule shall, at the first conference, determine whether there are any proceedings involving custody or other parental rights, ~~including adoption, brought under Title 18-C~~ concerning that child currently filed or pending before a Probate Court and/or whether the District Court has issued an order involving the minor child under subdivision (a)(1)(C) of this Rule. ~~A case is "pending" in a court when it has been filed in the court and is being litigated in the court, and/or is awaiting a judgment or order from the court.~~

(1) Conference. ~~If Within 7 days of learning of any such proceeding concerning the child in a Probate Court,~~ the District Court ~~learns of any such~~

~~proceedings, it shall, within 7 days,~~ conduct a ~~telephone~~ conference with the Probate Court. At that time, the District Court shall ~~to~~ determine the appropriate action to facilitate a transfer of the matter from the Probate Court unless the District Court does not have jurisdiction pursuant to subdivision (a)(2) of this Rule. In making that determination, the District Court shall be guided by the requirement that the District Court serve as the home court for all cases involving a minor child's custody or parental rights, whether filed in the Probate Court or District Court, while at the same time ensuring that parties are not required to re-litigate a matter that has already been heard by the Probate Court. Before determining the most appropriate action, the District Court shall consider all relevant factors, including:

(A) The type of case filed in each court,

(B) The identity of the parties,

(C) The extent of the Probate Court litigation,

(D) The extent of the litigation or anticipated litigation in the District Court,

(E) The length of time the proceeding has been pending in the Probate Court,

(F) The date and nature of any already-scheduled proceedings,

(G) Whether the Probate Court has already conducted any interim or started any final hearings, and

(H) Whether there are any impediments to the immediate transfer.

(2) Audio Record. The District Court shall make an audio record of the conference conducted with the Probate Court.

(3) No Conference Held. If the District Court is unable to hold a conference with the Probate Court within 7 days the time specified in Rule 126(a)(1), the District Court shall, using the factors listed in that section subdivision (d)(1) of this Rule, determine the appropriate action to facilitate a transfer of the matter from the Probate Court.

(4) Transfer of the Case. As soon ~~thereafter~~ as possible, and in any case no more than 28 days after the conference with the Probate Court or 35 days after the District Court learns of the case pending or filed in the Probate Court, whichever is sooner, the District Court shall issue an order that immediately transfers the Probate Court proceeding to the District Court ~~where there is a pending family matter or child protection case,~~ unless the court determines that immediate transfer would result in undue delay or waste of judicial resources or that the District Court does not have jurisdiction. If the District Court determines that it does have jurisdiction, but does not order immediate transfer, it shall issue an order that transfers the proceeding from Probate Court to District Court:

(A) As soon as a specified event in the Probate Court has occurred,

(B) As soon as the Probate Court has issued ~~an~~ a non-final order ruling on a matter it has under advisement, or

(C) On a date certain.

The District Court shall provide copies of the transfer order to all parties and to the Probate Court.

~~(b)~~ (5) Procedure for Transfer. Within 7 days after the date of transfer specified in the transfer order, the Register of the Probate Court shall file with the District Court that issued the order of transfer the original filings, orders, exhibits, and transcripts, if any, of the proceeding, together with a certified copy of all docket entries for the proceeding being transferred.

~~(c)~~ (6) Effect of Transfer. The transferred action shall be litigated in the District Court as if originally begun there, and the District Court shall have exclusive, continuing jurisdiction of all matters concerning the child(ren) involved in the transferred action pursuant to 4 M.R.S. § 152(5-A). Thereafter, any ~~family matter,~~ guardianship, adoption, name change, or other matter involving custody or other parental rights with respect to that minor child or those minor children must be filed in the District Court.

~~(d)~~ (7) Determining Course of Proceedings after Transfer. Immediately after issuing the order of transfer, the District Court shall schedule

a case management conference, which must be held no later than 28 days after the issuance of the transfer order. Participants in the conference shall include the parties involved in the District Court proceeding and the Probate Court case that has been transferred. At the conclusion of that conference, the court shall decide whether to consolidate for hearing the case transferred from the Probate Court with the action already pending in the District Court, and shall determine the course of both cases.

(e) Effect of Previous Orders. Any order of the Probate Court entered before transfer shall remain in force until modified by the District Court.

Advisory Note – February 2024

This Rule has been amended to incorporate changes to 4 M.R.S. § 152(5-A) made by Public Law 2023, chapter 63, “An Act to Clarify Court Jurisdiction of Actions Involving Children Brought Under the Maine Uniform Probate Code,” enacted by 131st Maine Legislature, which became effective on October 25, 2023. These changes include, but are not limited to, (1) the addition of proceedings under the Maine Juvenile Code brought against the minor child and certain orders issued by the District Court that now trigger District Court jurisdiction, and (2) the elimination of protection from abuse or harassment matters as actions that trigger District Court jurisdiction. The Rule has also been amended to add subdivisions addressing when the District Court does not have jurisdiction and to incorporate a procedure for probate code filings that are initiated in the District Court.

2. Rule 127 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 127. PROTECTION FROM ABUSE CASES

~~(a) Handling of Any Pending Matters in Probate Court. The District Court presiding over any protection from abuse (PFA) matter involving the custody or parental rights of a minor child shall, at the first opportunity, determine whether there are any proceedings involving custody or other parental rights concerning that child currently filed or pending before a Probate Court. If the final hearing on a PFA request is not heard within 21 days, the District Court shall contact the Probate Court to facilitate a transfer of the pending Probate Court case. If a family matter (FM) filing occurs as a result of a PFA order, the~~

~~court shall thereafter follow the directives of Rule 126 when handling the FM proceeding.~~

~~—(b) Encouraging the Filing of a Family Matter Petition.~~ Any protection from abuse (PFA) order that establishes or affects the custody or other parental rights of a minor child shall include a suggestion that one of the parties initiate an FM proceeding to establish a more permanent order regarding parental rights and responsibilities concerning the child. When the PFA order is inconsistent with an existing FM order, the PFA order shall suggest that one of the parties file a motion to amend the FM order. In determining whether to schedule a motion to amend that portion of a PFA order that establishes or affects the custody or other parental rights of a minor child, the court will consider the parties' action or inaction with regard to the initiation of an FM proceeding.

Advisory Note – February 2024

This Rule has been amended to incorporate changes to 4 M.R.S. § 152(5-A) made by Public Law 2023, chapter 63, “An Act to Clarify Court Jurisdiction of Actions Involving Children Brought Under the Maine Uniform Probate Code,” enacted by 131st Maine Legislature, which became effective on October 25, 2023. Former subdivision (a), “Handling of Any Pending Matters in Probate Court,” has been removed to eliminate protection from abuse matters as actions that would trigger District Court jurisdiction over a probate code matter filed in the Probate Court.

Dated: February 26, 2024

FOR THE COURT,*

_____/s/_____
VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
ANDREW M. HORTON
CATHERINE R. CONNORS
RICK E. LAWRENCE
WAYNE R. DOUGLAS
Associate Justices

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