

MAINE STATE LEGISLATURE

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**REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY
OF THE 129th LEGISLATURE AND
THE MAINE SUPREME JUDICIAL COURT
ON CASES HANDLED BY THE
FAMILY DIVISION
OF THE
MAINE DISTRICT COURT**



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I. Introduction

The Maine State Legislature created the Family Division of the Maine District Court in 1997 in order to “provide a system of justice that is responsive to the needs of families and the support of their children.” 4 M.R.S. § 183; P.L. 1997, ch. 269. To carry out this central purpose, the Legislature authorized the use of family law magistrates¹ to process family matters in a way that ensures children’s needs are being met.

When the Maine Legislature founded the Family Division and authorized the creation of family law magistrates, it also directed the State Court Administrator to “keep statistical records relating to the cases handled by the Family Division and report this information to the Supreme Judicial Court annually and to the joint standing committee of the legislature having jurisdiction over judiciary matters by February 15th of each odd-numbered calendar year.” 4 M.R.S. § 183(3).

Pursuant to this requirement, the State Court Administrator presents this 11th report concerning the Family Division. The following report provides an overview of the Family Division’s structure and operations, as well as an update on legislative and procedural changes affecting the Family Division in calendar years 2017 and 2018.

¹ The magistrates were originally called “case management officers.”

II. Family Division Overview

a. Statutory Authority and Operational Structure

The purpose, authority, and scope of the Family Division are outlined in Title 4 Section 183 of the Maine Revised Statutes. Title 4 Section 183 also authorizes the Supreme Court to adopt court rules to govern the practice, procedure, and administration of the Family Division. The Maine Supreme Judicial Court adopted court rules outlining the procedures to be followed in family matters in 1998, and those rules are now part of the Maine Rules of Civil Procedure. *See* M.R. Civ. P. 110-127.

b. Family Matters Case Processing

When a family matter is filed, it is set on one of two tracks, depending on whether the case involves children. If the case does not involve children, it will be managed and heard exclusively by a judge. In the cases where the parties are able to reach an agreement, the judge will hold an uncontested hearing. If the parties are unable to reach an agreement, the judge will manage the case and hold a final contested hearing.

In contrast, with the exception of post-judgment motions for contempt involving children, which are referred directly to a judge, M.R. Civ. P. 110A(b)(6)(C), all family matters involving children are assigned first to a family law magistrate. M.R. Civ. P. 110A(a). Family law magistrates are judicial officers

with limited jurisdiction. 4 M.R.S. §§ 183(1)(D)-(F); M.R. Civ. P. 110A, *Family Law Magistrate Authority*, Me. Admin. Order JB-05-18 (effective August 1, 2005). Magistrates are required to be “members of the Bar of this State and must have experience in the area of family law.” 4 M.R.S. § 183(1)(A). Furthermore, magistrates must have “training or experience in mediation and other alternate dispute resolution techniques, domestic violence, child development, family dynamics and case management.” *Id.*

Sixty-six percent of the family law magistrates’ salaries are covered by federal funds allocated to Maine under Title IV-D of the Social Security Act, 45 C.F.R. § 304.2(b)(2). By way of illustration, in the fiscal year ending on June 30, 2017, Title IV-D funds paid for \$736,478 of the total \$1,115,876 for magistrates’ salaries.

Currently, there are eight family law magistrates and one active retired magistrate serving Maine’s district courts. They are all well-respected and qualified members of the Maine Bar with substantial experience in family law and a strong commitment to public service. As explained below, the work the magistrates perform provides a substantial benefit to Maine’s families and to its judicial branch.

i. Case Management Conference

In order to promptly assess and address a family’s needs, magistrates hold a case management conference as the first step in family matters involving children.

At the case management conference, the magistrate (1) explains the court process to the parties, (2) helps the parties identify those issues on which the parties agree and which issues are in dispute, (3) enters interim court orders, and (4) determines how to help the parties resolve any issues in dispute. Based on what she or he learns at the case management conference, the magistrate may order the parents to attend a parent education program, send them to meet with a mediator, and/or schedule an interim hearing.²

One of the magistrate's primary roles is to ensure that the children's financial needs are being met while the case is pending. If the parties are unable to agree to an interim order of child support at the case management conference, the magistrate will hold an interim child support hearing immediately following the conference or not more than 63 days after the case management conference. M.R. Civ. P. 108(f)(2). All interim orders entered by a magistrate may be "decided de novo at the final hearing." M.R. Civ. P. 110A(b)(7).

ii. Mediation

The Legislature has determined that when minor children are involved in a family matter, the court must refer the parties to mediation, except for "extraordinary cause shown." 19-A M.R.S. § 251(2)(B). In cases involving domestic abuse, the

² Magistrates will preside over interim hearings concerning parental rights and responsibilities other than child support only if both parties consent to determination of the issues by the family law magistrate instead of a judge. 4 M.R.S. § 183(1)(D)(2). If the only interim issue in dispute is child support, however, the parties' consent is not required for the magistrate to hear the issue. *Id.*

court may find “extraordinary cause” and waive mediation, or may give the parties the option to mediate in separate rooms. At mediation, the parties are assisted by a professional mediator who is rostered by the Court Alternative Dispute Resolution Services (CADRES). All CADRES mediators are required to have a minimum of 100 hours of mediation training and experience, including at least 8 hours of training related to domestic abuse issues. Mediators must also fulfill rigorous continuing education requirements to remain active on the mediator roster. For a fee of \$160,³ parties are given two three-hour mediation sessions with the court mediator to develop their own creative solutions specially tailored to their nuanced and unique family issues.

iii. Final Hearings

When the parties are unable to reach a full agreement through mediation, the court will schedule their case for a final hearing. A magistrate will preside over the final contested hearing if child support is the only contested issue. 4 M.R.S. § 183(1)(D). When other issues are in dispute, a judge will preside over the final hearing. M.R. Civ. P. 110A(5)(B)(ii). All final orders entered by family law magistrates are subject to review by a District Court judge if the party files an objection within 21 days after entry of the magistrate’s final order. M.R. Civ. P.

³ The fee is generally allocated equally between the parties. Parties who cannot afford the mediation fee can apply for a fee waiver.

118(a). When an objection is filed, a judge will review the record established before the magistrate, with or without a hearing, and may adopt, modify or reject the order, set the matter for further hearing, or recommit the matter to the magistrate with instructions. M.R. Civ. P. 118(a)(2). A party whose timely objection to the magistrate's order was unsuccessful may appeal from a judge's final judgment in accordance with the Maine Rules of Appellate Procedure. M.R. Civ. P. 118(b).

iv. Post Judgment Motions

When there has been a “substantial change in circumstances” since the entry of the most recent decree, and a modification would serve the best interest of a child, a party may ask the court to change provisions relating to parental rights and responsibilities in that decree by filing a post-judgment motion to modify. *Neudek v. Neudek*, 2011 ME 66, ¶ 10, 21 A.3d 88 (discussing 19-A M.R.S. § 1657(1)) (quotation marks omitted); M.R. Civ. P. 110A(b)(6)(B). Parties may also file motions to enforce or for contempt when the opposing party fails to comply with an existing court order. M.R. Civ. P. 110A(b)(6)(B); M.R. Civ. P. 66(d). All post-judgment motions asking to modify or enforce provisions related to minor children are assigned to a magistrate for case management. M.R. Civ. P. 110A(b)(6). Motions for contempt, however, must be referred to a judge. M.R. Civ. P. 110A(b)(6)(C). Post-judgment matters comprise approximately 40% of the total number family matters proceedings handled by district courts in Maine.

c. Cases Handled by Family Division in Calendar Years 2017 and 2018

In calendar year 2017, there were 8,148 original family matters⁴ and 5,986 post-judgment motions⁵ for a total of 14,134 family matters filed. In calendar year 2018, the total filings decreased slightly to 13,302, and consisted of 7,799 original family matters and 5,503 post judgment motions.

Table 1. Total Family Matter Filings

	CY 2018		CY 2017	
	ORIGINAL FAMILY MATTERS	POST-JUDGMENT FAMILY MATTERS	ORIGINAL FAMILY MATTERS	POST-JUDGMENT FAMILY MATTERS
TOTAL	7,799	5,503	8,148	5,986
	13,302		14,134	

Of the 14,134 original and post-judgment family matters filed in 2017, approximately 10,870 cases were initially handled by magistrates.⁶ Magistrates handled approximately 10,276 of the 13,302 total family matters filed in 2018. In order to process the original family matter filings involving children, magistrates conducted 8,724 court events in calendar year 2017, and 8,284 court events in

⁴ Original family matter filings include divorces with and without children, parental rights and responsibilities, adoptions, guardianships, name changes, and other family matters.

⁵ Post-judgment motions in family matters include motions for contempt, motions for relief from judgment, motions to enforce, and motions to modify.

⁶ Because magistrates have limited jurisdiction, they do not handle all the family matters that are filed in district court, but rather, generally only manage family matters involving children in the following case types: child support, divorce, legal separation, parentage or parental rights. 4 M.R.S §§ 183(1)(D)-(F); M.R. Civ. P. 110A, *Family Law Magistrate Authority*, Me. Admin. Order JB-05-18 (effective August 1, 2005).

calendar year 2018. To process the post-judgment motions involving children, magistrates held 5,172 court events in 2017, and 4,773 court events in 2018.

Table 2. Family Matter Filings Handled by Magistrates

	CY 2018	CY 2017
Total Number of Family Matter Filings	13,302	14,134
Number of Family Matter Filings Handled by Magistrates	10,276	10,870
Total Number of Magistrate Court Events to Process Family Matter Filings Handled by Magistrates	13,446	13,057

III. Operational and Legislative Changes in the Family Division

a. Electronic Case Management System

In December 2016, the Judicial Branch announced the signing of a contract with Tyler Technologies to develop and implement an electronic case management system for the Maine state courts. The transition to the Odyssey electronic case filing system will ensure that litigants with access to computers at home or in public libraries will be able to initiate cases and file motions without having to travel to a courthouse. Additionally, litigants will be able to view their case files on the Odyssey Portal via their mobile phones.

The Violations Bureau first implemented the system for traffic violations in late 2018. Currently, the Family Division is working with the Judicial Branch project

team to configure Odyssey for all family matter case types. Region 5 (Bangor, Newport, Lincoln, and Dover-Foxcroft District Courts) will be the first region to implement the electronic case management for all case types, including family matters, and will be followed by all other regions until there is statewide implementation.

On February 1, 2019, the Judicial Branch submitted proposed legislation to the Office of the Revisor of Statutes, addressing public access to electronic court records. The bill builds on the Supreme Judicial Court's authority to develop and promulgate rules addressing systems or procedures for the management of digital court records. L.D. [unassigned number] (129th Legis. 2019). The proposed statute emphasizes that its intention is to “recognize the tradition of open courts, to acknowledge the Court's responsibility to assure that access to public case records is preserved, and to protect information, data, and documents that are private and personal, the release of which would serve no legitimate governmental interest while making available those case records that advance the public's interest in the administration of justice.” *Id.*

Family matters involve highly sensitive information, including details regarding children, finances, and in some cases, the existence of physical, emotional, or sexual abuse. Thus, the court rules will strike a balance between the need to protect privacy and guard against opportunities for abuse, exploitation, and harm

stemming from general online access to the sensitive information in family matters, and the public’s need to have access to sufficient information to monitor and evaluate court actions and processes in these cases.

b. Revision to the Grandparents Visitation Act

On March 7, 2018, the Legislature enacted an Act to Revise the Grandparents Visitation Act, which became effective on August 1, 2018. P.L. 2017, ch. 238 (effective August 1, 2018). The legislation to revise the Grandparents Visitation Act was enacted in response to the Maine Supreme Judicial Court’s interpretations of the Act. In its case decisions, the Court noted that the plain language of the statute was problematic, in light of the constitutionally protected right of parents to make decisions concerning their children. Indeed, in *Dorr v. Woodward*, 2016 ME 79, ¶ 26, 140 A.3d 467, the Law Court specifically asked for legislative action, declaring, “[W]e agree that legislative action concerning the Act is called for. In order to construe the Act in accordance with the Constitution, our decisions have, over time, limited the scope of the Act when a grandparent is seeking to impose court-ordered visitation against the wishes of a fit parent.”

The language of the revised Grandparents Visitation Act now tracks with the Law Court’s jurisprudence. It permits grandparents to obtain visitation rights only when there is a “sufficient existing relationship between the grandparent and the child, or [a]ny other compelling state interest [that] justifies the court’s interference with the

parent’s fundamental right to deny the grandparent access to the child.” 19-A M.R.S. § 1803. The statutory language also specifies the procedures and standards that apply to such actions, including by defining a “sufficient existing relationship.” 19-A M.R.S. § 1802. By aligning the statute with the standards and procedures enunciated in the corresponding case law, the statute now ensures that families can turn to the statute for accurate guidance in these cases.

In response to the enactment of the Act to Revise the Grandparents Visitation Act, the Family Division developed an informational self-help webpage that explains the standards and court procedures for grandparent visitation petitions. The webpage also provides links to legal aid organizations for assistance and additional information.

c. Implementation of Changes to Guardian ad Litem Billing

In 2013, the Maine Legislature enacted “The Act to Improve the Quality of Guardian ad Litem Services for the Children and Families of Maine” (the Act). P.L. 2015, ch. 406; 4 M.R.S. §§ 1551-1557. The Act made several statutory changes, including the addition of language to require that any order appointing a guardian ad litem specify the length of the appointment, the specific duties for the particular case, and the specific fee arrangements for the case. The Act makes clear that the guardian ad litem “has no authority to perform and may not be expected to perform any duties

beyond those specified in the appointment order.” P.L. 2015, ch. 406, § 1555(2)(B); 4 M.R.S. § 1555(2)(B).

To implement these requirements, the Family Division revised the Judicial Branch’s form, Order for Appointment of Guardian ad Litem (form FM-125), to clearly specify the parameters of the appointment as required by the Act. The Family Division also worked with the Chief Judge of the District Court to revise the Administrative Order regarding the fee schedules and administrative procedures for reimbursement of court-appointed guardians ad litem in child protection matters, as well as in guardianship and adoption cases transferred to the District Court under the Home Court Act. *Revised Fee Schedule for Guardians ad Litem and Court Appointed Workers’ Compensation Attorneys in all Courts*, Order JB-05-5 (effective October 1, 2017). Among its requirements, the Administrative Order caps the number of hours for reimbursement and requires guardians ad litem to itemize their time to allow the court, and the parties, to assess the nature of each task and time spent on each task. *Id.*

d. Launch of Improved and Expanded Family Division Web Content for Self-Represented Litigants

The majority of family matters involve parties who are navigating the court process without attorneys. Indeed, in calendar year 2018, in 56% of the original family matters filed, *neither* party was represented by an attorney. Recognizing the importance of accurate information for unrepresented parties, the Family Division

set out in 2017 to improve and expand the information pertaining to family matters on the “Citizen Help” portion of the Judicial Branch website. Over the course of five months, the Family Division meticulously reviewed and updated all the existing content, as well as developed new content. After an extensive and detailed review of the content, the Family Division launched the new and expanded web content on June 2018.⁷ Since its launch, the Family Division informational webpages have been viewed more than 55,360 times.

e. Launch of the One Family-One Judge Case Management System

In 2018, after reviewing national best practices for management of family cases, the Supreme Judicial Court began the Team pilot project for family cases involving children in Cumberland County. The Team project embraced a “one-judge, one-family” system of case management and, by identifying the judge and/or magistrate who is responsible for managing each case, everyone—the judges, magistrates, clerks, families, and attorneys—now knows what will be happening in a given case, and who will be responsible for managing the case.

There are four essential features of the Family Matter with Children Team Management Procedure:

1. One, each case with children is assigned to and managed by a specific magistrate.

⁷ The Judicial Branch “Citizen Help” web page can be accessed here: https://www.courts.maine.gov/citizen_help/index.shtml

2. Two, the case stays with the magistrate to whom it has been assigned until it is actually ready for trial.
3. Three, after pretrial, the case is assigned to a specific judge/clerk team.
4. Four, very soon after the hand-off to the managing judge, that judge holds a telephone conference with the parties/counsel to choose a trial date(s).

After determining that the new system was providing better service to litigants, and had improved communication among the magistrates, judges and clerks, the Court directed the Family Division to initiate the Team system in all Regions. That process is now underway.

IV. Conclusion

The Family Division supports Maine's District Courts in addressing the needs of families and children involved in family matters. Family law magistrates manage the cases involving children to ensure that the children's needs are being met while the matter is pending, the parents have information about the court process, and the parents have the tools necessary to resolve their disputes, whenever possible. Magistrates and judges collaborate to fashion fair and thoughtful resolutions in an increasingly complex and large caseload. Moving forward, the Judicial Branch will endeavor to continue implementing improvements to court processes that increase efficiency and provide quality resources for Maine families.