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FAMILY DIVISION TASK FORCE – 2006 (FDTF)



Final Report to the Justices of the Maine Supreme Judicial Court

MAR 21 2012

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PREAMBLE

The members of the Family Division Task Force (FDTF) are pleased to submit this Report to the Justices of the Supreme Judicial Court for consideration. The substance of this Report represents the final product of an intensive and concentrated review of the current case management process in family matters. The observations and recommendations in this Report are made in the context of the continuing evolution of the Family Division. The Family Division has been tasked with the prompt and compassionate delivery of justice to Maine children and families, and has performed its duties admirably. The FDTF members acknowledge the excellent efforts of the Family Division.

The review process that culminated in this Report could not have been completed without the dedicated efforts of many individuals. The FDTF members recognize the Office of Information and Technology and the District Court Clerks for their very fine work in connection with the review process. Their efforts, together with those of the FDTF members, were crucial to the production of this Report.

Respectfully submitted,

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I. INTRODUCTION AND STATEMENT OF PURPOSE

The Maine Supreme Judicial Court established the Family Division Task Force by charter in June of 2006, for the purposes of evaluating the current operational practices and procedures of the Family Division, and recommending to the Maine Supreme Judicial Court changes necessary to improve the Family Division's management and resolution of family matters. *Family Division Task Force – 2006*, Maine Supreme Judicial Court (chartered June 9, 2006).¹

Preliminarily, the Task Force notes that the Family Division has greatly benefited Maine families by providing a predictable system of managing family law cases. In addition, child support, which in some courts formerly was not ordered until the matter had been pending for several months, is now routinely addressed in the early stages of family law cases with children.

a. The Task Force's Mandate

As charged by the Maine Supreme Judicial Court,

The ultimate goal of the Task Force is to recommend changes that will best serve the public's needs, to eliminate court events that create unnecessary costs or delays, to promote prompt resolution of disputes, and to promote better allocation of the resources of the Judicial Branch.

F.D.T.F. – 2006, § I.

b. Aspects of the Case Management Process Identified to the Task Force for Examination

The Task Force has been directed to examine the timing, scheduling, frequency, process and content of family law proceedings before Family Law Magistrates and the District Court, as well as the authority of Family Law Magistrates. *F.D.T.F. – 2006*, § I. The Task Force assessed these areas in the context of the resources currently available to the Family Division. The examination focuses on how to utilize these resources most efficiently.

¹ See Charter, Appendix A.

II. THE REVIEW PROCESS

The Family Division was created 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 (Supp. 2006).² The Task Force is mindful of the goals of the Family Division in its mission, and was guided by these goals in its review of the case management process. *See* M.R. Fam. Div. II(B)³ for statement of Family Division goals. In other words, the Task Force examined each point of process and procedure to determine whether the process has been successful in achieving the Family Division’s goals. The Task Force concluded that the following objectives are particularly relevant to the evaluation of the current case management process: the timely resolution of family cases both pre- and postjudgment, efficient case management, promotion of a better understanding of court processes, and the facilitation of parenting arrangements in the best interest of children and establishment of child support at an early stage in the proceedings. M.R. Fam. Div. II(B)(1), (2), (3), (4), and (6). The Task Force approached its review with the strategy of enhancing the case management process to better achieve these goals.

An important element of the Family Division’s goals is the prompt initial appearance before a magistrate. Because the court can bring some stability for families, and possibly even resolve the dispute at the initial appearance, the Task Force believes that assuring a prompt initial appearance before a magistrate is essential to the success of the case management process. To achieve this objective, the Task Force’s recommendations are in part designed to reduce the number of magistrate events that do not address substantive issues. Magistrates would then have more time to devote to initial appearances. With this result in mind, the Task Force recommendations include the requirement that the initial appearance occur no longer than 45 days from the date of filing.

The Task Force began the review process by gathering data from all District Courts throughout the State, which data included the Family Division’s annual caseload, identifying pre- and postjudgment proceedings.⁴ The Task Force also obtained information regarding the scheduling practices of all of the courts.⁵

Using the data to focus the inquiry, the Task Force consulted with practitioners in the field of family law, judicial officers, legislators and court personnel to identify and refine the issues most relevant to the efficient resolution of family matters. The recommendations contained in this report are in part the product of these many conversations, conducted during the Task Force’s review process.

The Task Force also scrutinized the scope of magistrate authority to determine whether the magistrates’ authority should be modified in any way.

² See Appendix C, p. C1 for text of statute.

³ See Family Division Rules at Appendix B, p. B21.

⁴ The Office of Information Technology was invaluable in this effort.

⁵ The District Court clerks were particularly helpful in supplying information regarding court scheduling practices in family matters across the State.

As an essential component of the Task Force's review of the case management process, the Task Force examined the applicable Civil and Family Division rules. These rules determine the structure of the case management process, but their effect cannot be viewed in the abstract. The Task Force paid particular attention to the manner in which the rules are currently utilized and interpreted by court staff, parties and attorneys. A touchstone of the review process was a constant assessment of the use and application of the existing rules. This assessment revealed the flexibility of some rules, while at the same time highlighting the lack of enforcement of others.

III. SUMMARY OF CONCLUSIONS

The Task Force's review revealed both great improvements in the handling of family matters since the inception of the Family Division, and some points in the process at which changes in the procedure and/or application of the rules of the existing process could work to deliver justice to Maine families more responsively.

The Task Force concluded that the system can be further improved and function more efficiently if the case management process is refined to be less rigid and if the enforcement of existing procedural rules is increased. The majority of cases move through the case management system in a consistent, predictable manner and are resolved without the need for a contested hearing.

Nevertheless, during its review, the Task Force learned that some stakeholders are concerned that parties are required to attend too many case management conferences at which little is accomplished. Some current scheduling practices indiscriminately promote numerous conferences in pre- and postjudgment family matters. The Task Force has, therefore, focused much of its attention on tailoring the number of conferences held in a case to the particular needs of that case.

The Task Force determined that the current filing deadlines for various documents, including Child Support Affidavits and Financial Statements, should assist the efficient and effective processing of the cases. The review revealed, however, that compliance with and enforcement of the filing requirements are inconsistent. Because judges, magistrates and the parties need the information contained in these filings in order to address the issues in a meaningful way, the management of the cases is compromised when parties do not comply and the courts do not enforce these requirements.

The frequency of *pro se* representation in family matters presents a unique challenge to the case management process. Clerk training, the use of specialized forms and notices, and in-court education by magistrates have improved access to family justice for *pro se* litigants. Further education of litigants as to the court's expectations is an important factor in the efforts to improve the case management process.

The primary conclusion of the Task Force is that the case management process, which was intended as a flexible, responsive model for handling the many different family

matters, has gradually become a more rigid, standardized process that employs many of the same methods in handling simple cases as it does in handling complex family matters.

The Task Force determined that the principal impediments to the effective functioning of the case management process are: (1) the rigidity of the case management process, as it has evolved from the inception of the Family Division, and (2) the lapse in compliance with and enforcement of procedural rules applicable to family matters.

The Task Force also determined that the solutions to these impediments fall into four categories: (1) rule enforcement; (2) rule changes; (3) policy implementation; and (4) statutory changes. The application of the proposed solutions in these four categories is, with the exception of the few substantive statutory and rule changes proposed, consistent with the existing structure of the Family Division Rules and the mission and goals of the Family Division as stated at M.R. Fam. Div. II. The Task Force expressly acknowledges the effectiveness of the existing Family Division Rules, and looks to their enhanced enforcement to increase the flexibility, efficiency and effectiveness of the case management process

IV. ENFORCEMENT AND/OR USE OF EXISTING RULES TO EFFECT THE PURPOSES OF THE TASK FORCE

The Task Force identified several family matter-related rules for specific enforcement, and noted that lack of enforcement of these rules has resulted in relatively meaningless events (where required materials have not been filed) and created unnecessary expense and delay. The Task Force recommends that enhanced enforcement and/or use of the identified rules be effected through clerk training and District Court policy implementation.

a. M.R. Fam. Div. III(A)(2)

M.R. Fam. Div. III(A)(2) requires that a completed child support affidavit be filed with a complaint or motion, as well as with the corresponding response, and directs the clerk to refuse incomplete filings. Sanctions for failure to file a child support affidavit are provided for in M.R. Fam. Div. III(H)(2), M.R. Civ. P. 80(c)⁶ and 19-A M.R.S.A. § 2004(D)(1998).

The enforcement of this rule by clerks and judicial officers will permit the parties and judicial officers to address matters of substance at each court event, and will reduce the need to schedule additional case management conferences. One powerful enforcement tool is the ability of clerks to refuse filings. Without the filing, the matter will not be scheduled for a conference, thereby allowing the court to use the time for matters of substance. Additionally, when the proper filing is subsequently made in matters for

⁶ See Appendix B, p. B15.

which the initial filing is refused as incomplete, the case management conference for that case will be much more productive.⁷

b. M.R. Civ. P. 80(c)

The filing of financial statements is governed by M.R. Civ. P. 80(c), which provides, in part,

In any proceeding under this rule in which there is a dispute about either a division of property or an award of spousal support the parties, prior to mediation or within 60 days after the party's answer and response, whichever is earlier, shall exchange and file a financial statement...

M.R. Civ. P. 80(c).

If a party fails to file a financial statement as required by M.R. Civ. P. 80(c), the court may make such orders as are just, including those specified in M.R. Civ. P. 37(b)(2).⁸ M.R. Civ. P. 80(c). Administrative Order JB-05-18 ¶ 4⁹ grants magistrates the authority to impose discovery sanctions including those set forth in M.R. Civ. P. 37, but excepting penalties based upon contempt consistent with M.R. Civ. P. 66.¹⁰ Thus, magistrates as well as judges have the tools to enforce the obligation to file a financial statement.

The failure to file a financial statement can delay an already scheduled mediation. The need to reschedule mediation strains judicial resources, wastes valuable mediation time, and delays the resolution of the case.¹¹

To aid in the timely filing of financial statements in qualifying cases, the Task Force recommends a filing deadline, requiring that the Financial Statement be filed within twenty-one (21) days from the date of the Family Division Scheduling Order¹² or prior to mediation, whichever is earlier.¹³ This earlier filing deadline may preempt the necessity of M.R. Civ. P. 37 sanctions, and should maintain cases on a consistent and predictable timeline.

⁷ The enforcement of M.R. Fam. Div. III (A)(2) would further the important Family Division goals to promote a timely resolution of family matters, to address promptly the establishment or modification of child support, to promote civility in family matters and to minimize the harm to children caused by family law cases. M.R. Fam. Div. II(B)(1), (2), (8), (9).

⁸ See Appendix B, p. B1.

⁹ See Appendix C, p. C4.

¹⁰ See Appendix B, p. B6.

¹¹ The active enforcement of this rule would serve the Family Division goals to promote a timely resolution of family cases, to promote civility in family cases and to make appropriate referrals to alternative dispute resolution services. M.R. Fam. Div. II(B)(1), (8), (10).

¹² See proposed Family Division Scheduling Order, Appendix E, p. E1.

¹³ See discussion of proposed Family Division Scheduling Order, *supra* at § VII.a.

c. M.R. Fam. Div. III(D)(2)

M.R. Fam. Div. III(D)(2) provides that motions to enforce “shall be addressed in a timely manner.” The Task Force notes, after consultation with judicial officers, clerks and practitioners, that the present system for enforcing orders is too cumbersome and slow. Primarily, this is attributable to the practice of scheduling a case management conference in all cases where a party has filed a motion to enforce. Conferences are unnecessary in enforcement proceedings and for that reason the Task Force recommends that they be eliminated.¹⁴

The Task Force recommends a companion policy, discussed at § VI.c of this report, which will work in tandem with enforcement efforts to enhance the likelihood that motion to enforce will be heard in a “timely manner.”

V. RULE CHANGES PROPOSED

The existing Family Division Rules provide an effective framework for case process, and, in most instances, afford practitioners, judges and magistrates the flexibility to tailor this process to particular cases. The Task Force has, however, also identified a few proposed rule changes that will enhance this flexibility.

a. Amendment to M.R. Fam. Div. III(D)(3) (Motion for Contempt)

Often, a party seeking compliance with a court order files a motion for contempt when the issue is more appropriately the subject of a motion to enforce. M.R. Fam. Div. III(D)(3) requires that motions for contempt be heard by a judge, whereas motions to modify or enforce are initially directed to magistrates. As a result, the parties occasionally appear before two judicial officers on the same issue. Too often, a party files a motion for contempt only because the hearing on the motion for contempt will be scheduled sooner than a hearing on a motion to enforce.

In addition, given the “clear and convincing evidence” contempt standard, the moving party might fail to prevail on a motion for contempt despite the fact that the other party is not complying with the subject order. In such a case, after unsuccessfully prosecuting the motion for contempt, the party often files a motion to modify or motion to enforce requiring additional court appearances before a magistrate. If the satisfactory

¹⁴ By eliminating case management conferences on motions to enforce, the court would provide greater assurance that, where a party is not following a court order, the court will respond swiftly to enforce compliance with orders in family cases, promote the timely resolution of family cases, and provide effective case management for family cases involving children. M.R. Fam. Div. II(B)(2), (1), and (3) respectively.

resolution of the issue involves not a finding of contempt, but a minor adjustment of a judgment or order within the subject matter raised by the motion for contempt, the judge hearing the motion is now unable to implement this remedy under M.R. Civ. P. 66. In order to secure the relief sought, the moving party must now file another motion.

The Task Force's response to this recurring dilemma is to provide for a limited consolidation of the process. If judges are authorized to grant relief even in the absence of a contempt finding, judges will be able to deliver justice more promptly, and reduce the need for parties to return to court on another motion.

In an effort to reduce the time in which the issues generated by the motions are resolved, and to reduce the possibility that the parties will have to make multiple court appearances on the same issue, the Task Force proposes the following amendment to M.R. Fam. Div. III(D)(3):

Contempt. Contempt proceedings shall be conducted by a judge in accordance with 14 M.R.S.A. § 252, M.R. Civ. P. 66 and M.R.Crim.P. 42. In the event that after hearing on the motion for contempt, and regardless of whether the court makes a finding of contempt, the court determines that an order is necessary to achieve the purposes of the judgment or order that is the subject of the contempt motion, the court may make such order as justice requires.

M.R. Fam. Div. III(D)(3)(recommended addition underlined).¹⁵

As discussed in the proposed advisory notes attached to this report, the purpose of this amendment is to allow a judge who hears a motion for contempt to consider any orders necessary to achieve the purposes of the underlying judgment or order.¹⁶ The scope of such orders would be restricted to the subject matter raised in the motion for contempt.¹⁷

¹⁵ See Appendix D, p. D2 for full text of rule addition and proposed advisory notes.

¹⁶ The Task Force recognizes that parties often file simultaneous motions for contempt and motions to modify. This procedure is not intended to dispense with the case management process for motions to modify, but may eliminate the need for further process where appropriate. In the event that parties move to modify, the Task Force suggests that the District Court develop a policy that encourages judges to conduct initial case management conferences on motions to modify during contempt hearings, if time permits and the necessary information is available to the court and the parties.

¹⁷ By way of example, a mother may file a motion for contempt based on a father's failure to pick up their child for visitation at 2:30 p.m. on Tuesdays and return the child home by 6:30 p.m., under the terms of the divorce judgment. The father is instead picking the child up at 3:00 p.m., because his employer has extended his workday ½ hour later than was the case at the time of the order. This conduct falls short of contempt, and yet failure to take judicial action will perpetuate the problem. The proposed rule amendment would permit the court to issue an order that is consistent with the underlying judgment in that it allows the father four hours of visitation on Tuesdays (by granting visitation from 3:00 p.m. to 7:00 p.m. on Tuesdays).

b. Request for Expedited Hearing

The Family Division Rules currently permit a magistrate (1) to dispense with a conference and proceed to hearing (M.R. Fam. Div. III(A)(1)), and (2) outline the process by which parties can jointly seek a waiver of a conference when there is a temporary agreement (M.R. Fam. Div. III(A)(5)). However, there is no specific provision authorizing an expedited emergency hearing in the Family Division Rules.¹⁸ The Task Force believes that there should be a uniform procedure for requesting such a hearing, provided that the conduct of an emergency hearing would not automatically preclude a later interim hearing.

The Task Force proposes that judicial officers be granted discretion to grant a request for emergency hearing if the circumstances of the case warrant immediate judicial intervention. The elements of the proposal include a new rule, and a form with which parties would request the expedited hearing.

The proposed rule is as follows:

XX. Expedited Hearings: Any party, including a guardian *ad litem*, may request that the hearing on any motion filed by that party or another party be expedited. Such requests shall be in the form of a motion for expedited hearing. Motions for expedited hearing shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing, and shall be considered in light of all relevant factors, including:

1. The court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;
2. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interests of a child or the parental rights of a party;
3. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;
4. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue presented in the case;
5. Any unreasonable delay on the part of the moving party in filing the motion; and
6. Any conduct on the part of either party impairing a fair and just resolution of the issues.

¹⁸ M.R. Civ. P. 80(d) permits the entry of orders prior to judgment as to advance attorney's fees, separate support, parental rights and responsibilities, child support and injunctions. This rule outlines the procedural requirement for seeking such an order ("motion after notice served not later than 7 days before the hearing..."), but provides no substantive standard for granting such a motion. In practice, this lack of criteria makes M.R. Civ. P. 80(d) a difficult provision to use effectively, and it is in fact seldom used.

The movant must state whether the non-moving party objects to the request in the motion. The non-moving party shall respond in writing within seven (7) days of filing of the motion. The judicial officer may act on the motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable good-faith effort to notify other parties and if delaying action would defeat the purpose of the motion. This rule does not authorize action on any motion for substantive relief without notice and opportunity for hearing.

Any judicial officer can act on a motion for expedited hearing. The expedited hearing on the underlying motion shall be assigned to a magistrate or judge in accordance with applicable law and procedure.

The court may require mediation before conducting the expedited hearing; may require that the parties present testimony by way of affidavit; and may adopt any other procedure reasonably necessary to facilitate the expedited hearing.

Proposed Expedited Hearing Rule, Appendix D, p. D4. The companion form to this proposed rule, entitled “MOTION FOR EXPEDITED HEARING,” is attached to this report at Appendix D, p. D5.

The availability of an expedited hearing serves several Family Division goals: (1) it promotes a timely resolution of family cases; (2) it promptly addresses the establishment or modification of child support; (3) it provides effective case management for family cases involving children; and (4) it facilitates parenting arrangements in the best interest of the children at an early stage in the proceedings. M.R. Fam. Div. II(B)(1), (2), (3), (4).¹⁹

c. Eliminate Mandatory Hearing in M.R. Fam. Div. III(B)(3)

M.R. Fam. Div. III(B)(3) currently mandates that a magistrate conduct a hearing on contested issues and issue an interim order after an unsuccessful mediation. In some cases, this requirement has required additional judicial events. If parties cannot agree at mediation, the case may be more appropriately in order for a final hearing.

In keeping with the Family Division goal “[t]o promote a timely resolution of family cases,” the Task Force proposes the following revision to M.R. Fam. Div. III(B)(3):

3. *Interim Orders After Hearing.* If, after mediation, the parties have not reached an interim agreement, the magistrate may conduct a hearing on the contested issues and enter an interim order...

¹⁹ Because, on occasion, parties seek expedited relief in child custody matters through the protection from abuse process, the Task Force believes that parties should have an alternate means of obtaining expedited relief through the family matter process.

M.R. Fam. Div. III(B)(3)(proposed amendment underlined).²⁰

This proposed revision affords magistrates the flexibility to dispense with the interim process when a case would benefit from a final hearing. The companion to this revision is a policy that presumes that when a case is not resolved at mediation, the case will be scheduled for a final conference with a magistrate, or, if requested by the parties and approved by the court, a pretrial conference before a judge.

d. M.R. Fam. Div. III(H) Sanctions

The Task Force notes that magistrates are authorized to impose specific sanctions under two separate authorities: M.R. Fam. Div. III(H) and Administrative Order JB-05-18, ¶ 4²¹. The Task Force recommends that JB-05-18, ¶ 4 be incorporated into M.R. Fam. Div. III(H) by creating M.R. Fam. Div. III(H)(3) as follows:

3. Failure to Comply with Discovery. If a party fails to comply with discovery, the magistrate may impose sanctions for such failure, including but not limited to those set forth in Maine Rule of Civil Procedure 37, but excluding any sanctions or penalties based upon a determination of contempt cognizable under Maine Rule of Civil Procedure 66.

See text of proposed amendment at Appendix D, p. D3. This addition to M.R. Fam. Div. III(H) is not proposed as an expansion of magistrate authority. The proposed amendment is only a codification of the authority already granted to magistrates through Administrative Order JB-05-18. This proposed amendment is made to clarify the extent of magistrate authority by placing similar grants of authority in one location within the Family Division rules. The consolidation of these two sources of magistrate authority would achieve the Family Division goal to provide court users with a better understanding of court processes. M.R. Fam. Div. II(B)(6).

VI. POLICY RECOMMENDATIONS TO STREAMLINE THE CASE MANAGEMENT PROCESS

a. Single Judge Assignment

The need to foster consistency, accountability, fairness, predictability, and efficiency in case management has informed the Task Force's conversation from the outset. The

²⁰ See Appendix D, p. D1. Note the change in terminology from "CMO" to "magistrate", which is consistent with the usage proposed by the Advisory Subcommittee to the Advisory Committee on the Maine Rules of Civil Procedure in its draft of the combined rules of civil and family matter procedure.

²¹ See Appendix C, p. C2 for text of order.

Task Force concludes that efficient case management is most effectively achieved through the handling of each case by a single judge.

The use of single judge assignment should provide more predictability and consistency in decision-making in the case, and permit the judicial officer to make a more effective assessment of when the case is in order for trial.

The Rules for the Family Division offer parties the option of having a judge determine interim issues. M.R. Fam. Div. III(B)(1). This is a party-initiated mechanism for placing a case before a judge. Once the case comes before the judge, however, there is no requirement that the case remain with that judge.

The Rules for the Family Division do authorize a judge to “manag[e] a case as provided for in these rules and any policies or procedures issued to implement them.” M.R. Fam. Div. I(C). Pursuant to the Family Division Rules, therefore, a judge can assume responsibility for a particular case.

The Task Force proposes a policy, consistent with the existing Rules of the Family Division and the Family Division goal to provide effective case management for family cases involving children, that absent extraordinary circumstances, the court assign each case to a single judge for case management and hearing.²²

b. Pretrial Conference Before the Trial Judge

Family matters are routinely scheduled for a pretrial conference before a magistrate after the completion of mediation and before placement on a trailing docket for hearing. Not infrequently, the case is subsequently scheduled for a trial management or another pretrial conference before the trial judge. In difficult cases, this might be beneficial, but in the typical family matter, this process results in unnecessary duplication of effort.

The Task Force seeks to refine this process into a system that clearly identifies the point at which a typical case is in order for and should be scheduled for hearing. The Task Force finds it preferable that the trial judge conduct the conference at which trial issues are discussed. To accomplish this, the Task Force recommends the court adopt a policy that, whenever practicable, the conference at which trial matters (e.g. time of trial, witness lists, exhibits, evidentiary issues, experts, trial issues) are finalized be conducted before the trial judge.

²² The Task Force discussed the pros and cons of assigning a judge to a case, either at the time of filing or upon placement on a trailing docket. This discussion included the potential scheduling burdens on courts and clerks. The discussion did not culminate in a specific recommendation for implementing the single judge assignment policy.

c. Scheduling of Motions to Enforce

In conjunction with the recommendation that the courts and clerks enforce M.R. Fam. Div. III(D)(2) regarding the prompt scheduling of hearings on motions to enforce, the Task Force recommends a policy that will give meaningful application to M.R. Fam. Div. III(D)(2). The proposed policy would require clerks to schedule motions to enforce for hearing upon filing, provided that the moving party supplies proof of service of the motion on the non-moving party. The policy would also dispense with case management conferences on motions to enforce. The institution of this policy would require the revision of form FM-070, 09/98, "MOTION TO ENFORCE," which currently notifies the parties that, if the motion involves minor children, the parties are required to attend a case management conference. The result of this policy should be that motions to enforce are heard and resolved with greater speed, thus accelerating the delivery of justice to families in need and in conflict.²³

d. Waiver of Post-Mediation Conference

Where the mediation of a case is unsuccessful and issues remain in dispute, the case is commonly set for a conference before a magistrate. A post-mediation conference is not required by rule, but is scheduled by the court as a matter of course.

In light of this standard procedure, the Task Force believes it would be beneficial to institute a policy allowing parties a means to "opt out" of this standard course where the conference before a magistrate is unnecessary and the case is in order for a pretrial before the trial judge.²⁴ The recommended policy provides that, where parties request a waiver of the post-mediation conference, and the court agrees, the court may dispense with the post-mediation conference before a magistrate and proceed to a pretrial before the trial judge.

This policy does not dispense with the post-mediation conference before a magistrate, but permits parties to request the opportunity to proceed directly to the trial judge for a pretrial conference. Such a procedure would be consistent with the proposed policy regarding pretrial conferences discussed *infra* at § VI.b.

VII. INSTITUTION OF POLICY RECOMMENDATIONS THROUGH THE USE OF NEW FORMS

The Task Force has reviewed the forms currently in use in family matters, and considered the impact of the use of the forms on the case management process. The Task

²³ This result directly promotes the Family Division Goals to promote a timely resolution of family cases and to promptly enforce compliance with support orders and all other orders in family cases. M.R. Fam. Div. II(B)(1), (2).

²⁴ See companion policy recommendation *infra* at § VI.b "Pretrial Conference Before The Trial Judge".

Force particularly considered the forms' clarity and effectiveness in guiding parties through the case management process. In some cases, the Task Force's recommendation for a rule amendment necessitates the introduction of or revision of a form. The proposed forms are discussed below in turn, and the forms themselves are attached to this report in Appendix E.

The Task Force recommends that, wherever possible, the proposed forms be used statewide. In addition, the Task Force recommends that forms developed by judges or clerks be provided to the Family Division, as a general repository and resource for family-related forms.

a. Proposed Family Division Scheduling Order

The course of a family matter is currently set at the initial case management conference in the form of a "Case Management Order." FM-138. This form attempts to document the nature of the case, the status of the case at conference, agreement or lack thereof in regard to parental rights and responsibilities, child support, property division and spousal support, the mediation process, attorney's fees and discovery. The form offers no charting of the continued progress of the case beyond the next court event.

The Task Force reviewed this form with a critical eye, and determined that the multi-purpose nature of the form, and its failure to chart a course for the case through to its conclusion, detract from its usefulness. The content of the form is meaningful to the management of a case, but the organization of the form does not serve the principles of expedience and efficiency necessary to achieve the Family Division's mission.

The Task Force proposes that the existing "Case Management Order," FM-138, be revised from its current dual-purpose format, and proposes the introduction of a new form, entitled "Family Division Scheduling Order."²⁵ This new form addresses all of the scheduling issues included in the "Case Management Order," and provides a schedule to the case's conclusion. The revised form, to be used at the first court appearance, should provide the parties with clear direction as to the court's expectations and the future course of the case.

The proposed Scheduling Order will provide effective case management for *pro se* litigants and for practitioners, and will provide court users with a better understanding of the case management process. M.R. Fam. Div. II(B)(3), (7).

b. Proposed Order (Interim / Final)

The counterpart to the new Family Division Scheduling Order is the Order (Interim / Final), which will address the issues remaining from the original Case Management Order after the removal of the scheduling provisions now contained in the Family

²⁵ See Appendix E, p. E1 for proposed form.

Division Scheduling Order.²⁶ This form facilitates the issuance of an interim or final order at a case management conference in a more understandable way.

c. Certificate in Lieu of Case Management Conference

The Certificate in Lieu of Case Management Conference, authorized under M.R. Fam. Div. III(A)(5), permits parties to waive the initial case management conference, and proceed to the next step in the process. Where an order is already in place, such as in post-judgment matters, the Certificate in Lieu of Case Management Conference is a valuable timesaving tool.

The Revised Certificate in Lieu of Case Management Conference (“Certificate”) must yield the work-product of a case management conference.²⁷ Thus, the Certificate must perform the functions of both the Family Division Scheduling Order and the Order (Interim / Final). The revised Certificate accomplishes much of the work of the original Case Management Order through the M.R. Fam. Div. III(A)(5)(a) requirement that there be an agreement between the parties on all interim issues relating to the children. This agreement is attached to the Certificate.

The scheduling provisions in the Certificate must also be completed, in order to define the course of the case in keeping with the purposes of the Family Division Scheduling Order.

d. Important Information Regarding Case Management Conference

The changes proposed to this existing form are intended to better prepare parties, particularly those proceeding *pro se*, for the case management conference. The changes to this form identify materials the litigants need to bring with them to the case management conference. See Revised Important Information Regarding Case Management Conference, Appendix E, p. E11.

VIII. LIMITED ENHANCEMENT OF MAGISTRATE AUTHORITY

The Task Force determined early in its work that a discussion of magistrate authority was a necessary component to an effective review of the case management process. The members of the Task Force present diverse views on the role of magistrates in the case management process.

An important issue with respect to magistrate authority is federal funding which imposes some restrictions on the role of magistrates. The Family Division is in part supported by federal child support funds. The Judicial Branch obtains the funds through a

²⁶ Order (Interim/Final), Appendix E, p. E4.

²⁷ See Revised Certificate in Lieu of Case Management Conference, Appendix E, p. E8.

cooperative agreement with the Department of Health and Human Services, Division of Support Enforcement and Recovery. The agreement provides for two-thirds reimbursement for eligible court costs, including the salaries and benefits of the 8 magistrates and 24 positions in court clerks' offices. The Judicial Branch also receives partial reimbursement for the salaries and benefits of employees in the Family Division. Federal child support funds cannot be used for court activities associated with cases not involving child support, and cannot be used to pay judicial salaries.

In order to qualify for the federal reimbursement for the salaries of magistrates, magistrates can only preside over cases in which child support plays a significant role. The Family Division must also preserve the distinction between magistrate and judge, to protect the federal funding.

a. Amendment to Permit Magistrates to Hear Motions to Enforce Interim Orders of Magistrates

This topic inspired lengthy discussion, and the Task Force was not able to reach unanimity as to this recommendation. A majority of the Task Force believes that magistrate authority should be increased through the following amendment to 4 M.R.S.A. § 183(1)(D):

D. Family law magistrates shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

(2-B) Actions to enforce interim orders issued by magistrates.

4 M.R.S.A. § 183(1)(D) (Supp. 2006) (proposed amendment underlined).²⁸ The purpose of the amendment is to authorize a magistrate to enforce the magistrate's own orders, and the orders of other magistrates.²⁹ By authorizing magistrates to enforce interim orders issued by magistrates, the amendment not only increases the likelihood of compliance, but prevents delay because the parties would not have to seek the intervention of a judge to enforce the order.

b. Magistrate Authority to Enforce Child Support Orders

The Task Force unanimously agrees that magistrates should have the authority to enforce child support orders.

²⁸ See Appendix F for full text of statute and proposed amendment.

²⁹ This proposed amendment is not to be construed to authorize magistrates to hear motions for contempt concerning their interim orders.

Currently, magistrates have the authority to issue final orders in contested cases where child support is the only contested issue. 4 M.R.S.A. § 183(1)(D)(4)(Supp. 2006). The Task Force proposes the following amendment to that provision:

4. Final orders in a contested proceeding when child support is the only contested issue, including final orders on motions to enforce child support orders. Where child support is an issue, this includes the authority to allocate tax exemptions.

4 M.R.S.A. § 183(1)(D)(4)(Supp. 2006)(proposed amendment underlined).³⁰

This amendment permits magistrates to enforce child support orders, whether issued by a judge or magistrate. This amendment is not intended to authorize magistrates to impose incarceration as a sanction to compel compliance. Incarceration as a coercive sanction remains available only through the contempt process in M.R. Civ. P. 66.

c. The Magistrate Pilot Project

The Task Force also considered the Magistrate Pilot Project. The Magistrate Pilot Project was promulgated by Administrative Order JB-06-1, effective May 1, 2006,³¹ which was in turn authorized by statute. 4 M.R.S.A. § 183(4)(Supp. 2006). In its early stages, this Project has been underutilized; however, the Task Force considers the Project to be a well conceived and emerging resource, and encourages its continuance on a pilot basis. The Task Force considered whether to recommend the expansion of the Magistrate Pilot Project, but currently lacks data on which to base such a recommendation.

The Task Force notes that the Project is currently limited to divorce actions with children. The scope and effectiveness of the Project could be improved by the inclusion of parental rights and responsibilities, paternity, and judicial separation matters involving children. This adjustment of magistrate authority would require amendments to 4 M.R.S.A. § 183(4) and Administrative Order JB-06-1.

IX. IMPLEMENTATION

Some of the recommendations in this Report will require submission to the Legislature or coordination with the Advisory Subcommittee to the Advisory Committee on the Maine Rules of Civil Procedure. The consideration of any statute or rule changes recommended can proceed without delay.

As to recommendations that can be implemented through District Court policy, the Task Force suggests that the Chief Judge of the District Court implement the policy recommendations set forth herein as approved by the Supreme Judicial Court.

³⁰ See Appendix F for full text of statute and proposed amendment.

³¹ Appendix C, p. C6.

X. CONCEPTS FOR FUTURE CONSIDERATION

The recommendations contained in this report are the product of careful analysis and consideration. Several concepts were raised over the course of the Task Force's review that were ultimately not included as part of the Task Force's recommendations. These concepts are worthy of note and further consideration.

a. Parenting Coordinators

The Task Force considered the use of parenting coordinators to resolve parenting disputes in high conflict cases and to facilitate parent education regarding the manner in which the process impacts their children. The role and training of the parenting coordinator are still being formulated, and newly crafted guidelines for parenting coordinators have been presented by the Association of Family and Conciliation Courts (AFCC) Task Force on Parenting Coordination. The AFCC Task Force on Parenting Coordination, *AFCC Parenting Coordination Guidelines*, Fam. Ct. Rev., Vol. 44 No. 1 (January, 2006). Maine has not yet embarked on a formal review of the use of parenting coordinators in our court system. The Task Force determines the use of parenting coordinators in the Family Division to be outside the scope of its directive, but encourages the exploration of this resource in the near future.

b. Family Court

The Task Force also considered the formation of a "true family court" that would facilitate the hearing by a single judge of all of a particular family's domestic, family matter, child protection and juvenile cases. Although again this concept is outside the scope of the Task Force's directive, it is a vision that warrants future consideration.

c. Video Guide to Family Matter Process

The expense involved in the litigation of family matters requires a significant number of parties to proceed *pro se*. This circumstance presents unique challenges to judicial officers, guardians *ad litem*, mediators, clerks, and the *pro se* litigants themselves.

To educate the parties regarding the process and their filing obligations, without the use of valuable court time, Portland District Court has instituted the use of a video guide to the family matter process, to be viewed by all *pro se* parties before the initial court appearance. The initial reviews of this effort are favorable. The Task Force, therefore, recommends the continued assessment of the Portland program to determine whether its application to other courts is prudent.

d. Postjudgment Mediators

Postjudgment motions to modify are subject to the case management process. M.R. Fam. Div. III(D)(1). The Task Force discussed the utility of having mediators be present

when the court conducts initial appearances on motions to modify. The mediators could assist the parties, particularly the self-represented parties, in identifying the issues in dispute, and possibly resolving the disputed issues at the first court appearance. This process is currently in place in Portland District Court, and needs to be monitored further to determine its viability for other courts.

e. Scheduling Orders in Family Matters Without Children

The formulation of a Family Division Scheduling Order³² has raised the issue of the lack of a scheduling order in family matters not involving children. To the extent that the Task Force's directive permits such a recommendation, the Task Force recommends that a scheduling order similar to that proposed for family matters involving children be employed in family matters without children.

f. Combined Civil and Family Rules

Lastly, the Task Force is aware that the Civil and Family rules are currently being reviewed by the Advisory Subcommittee to the Advisory Committee on the Maine Rules of Civil Procedure, and that a proposed combination of the Civil and Family Division Rules has been completed by the Subcommittee. A joint member of the Task Force and Subcommittee presented the then-current version of the Combined Rules Draft to the Task Force at its August 2006 meeting. The need for a consolidation of the Civil and Family rules is evident.

The interaction between the proposed Combined Rules Draft of the Subcommittee and the recommendations of the Task Force has not been evaluated. Some of the recommendations made in this report are consistent with the proposed Combined Rules, and some Task Force recommendations are inconsistent with the proposed Combined Rules. The Task Force recommends that a conference committee be appointed to consider how the Task Force's recommendations and the proposed Combined Rules will interact, before either is adopted. The Task Force's analysis of the case management process in this report is based on existing rules.

XI. CONCLUSION

As the Task Force noted at the beginning of the review process, the scope of the review of the Case Management Process under the Supreme Judicial Court's charter does not expressly encompass an assessment of whether the resources currently available to the Family Division are sufficient to permit the Family Division to achieve its stated goals. Thus, the Task Force reviewed the case management process within the context of the resources currently available to the Family Division. As with the Judicial Branch generally, the Family Division is under-resourced. With additional resources, including judges, magistrates and clerks, the effectiveness and efficiency of the case management process would be greatly improved.

³² Appendix E, p. E1; Discussed *infra*, at § VII.a.

THE STATE OF MAINE

FAMILY DIVISION TASK FORCE – 2006
(FDTF)



APPENDICES

to the

Final Report to the Justices of the Maine Supreme Judicial Court

APPENDIX A

FAMILY DIVISION TASK FORCE CHARTER

Family Division Task Force – 2006

Established June 9, 2006

I. Purpose

The purpose of establishing the Family Division Task Force - 2006 is twofold: First, to study and evaluate the Family Division's practices and procedures; second, to make recommendations to the Maine Supreme Judicial Court regarding any changes to law or rules improving the allocation of resources and/or the management of cases necessary to advance the Family Division's mission.[1] Toward this end, the Task Force will study and make recommendations regarding:

- A. The timing, frequency, and content of proceedings before Family Law Magistrates;
- B. The timing, scheduling, and process of family matters in the District Courts;
- C. The authority of Family Law Magistrates;
- D. The possible consolidation of M.R. Civ. P. 80 and the Family Division Rules; and
- E. Other related topics identified by the Task Force.

The ultimate goal of the Task Force is to recommend changes that will best serve the public's needs, to eliminate magistrate or judicial events that create unnecessary costs or delays, to promote prompt resolution of disputes, and to promote better allocation of magistrate and judicial resources.

II. Membership

The following individuals shall serve as members of the Task Force:

Hon. John Nivison, Chair

Hon. Ellen Gorman

Hon. A. Mark Horton

Hon. Andre Janelle

Magistrate Bruce Jordan

Magistrate Mary Kelly

Representative Josh Tardy, Esq.

Representative Janet Mills, Esq.

Sue Bement, Clerk, Lewiston District Court

Linda Cyr, Clerk, Fort Kent District Court

Rosemary Foster, Family Division Manager

David Abramson, Esq.

Kristin Gustafson, Esq.

Toby Hollander, Esq.

Dawn Pelletier, Esq.

Debby Willis, AAG

IV. Meetings

The Task Force will meet on a schedule established by its Chair. The Chair may also, in his discretion, establish subcommittees of Task Force members.

V. The Report

The Task Force will issue its written report and recommendations to the Supreme Judicial Court on or before November 1, 2006. The Task Force's recommendations should include drafts of any statutory and rule amendments that will be required to implement its recommendations. The Task Force may also propose an implementation plan and schedule.

[1] The Family Division of the Maine District Court was established in 1998. The Division adopted a case management process to achieve its stated mission of "providing a system of justice that is responsive to the need of families and support of their children." 4 M.R.S. § 183 (2005).

APPENDIX B

RULES APPLICABLE TO FAMILY MATTERS

M.R. Civ. P. 37.....	B1
M.R. Civ. P. 66.....	B5
M.R. Civ. P. 80.....	B13
Maine Rules for the Family Division of the Maine District Court.....	B19

RULE 37. FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. A motion for an order to a party or a deponent shall be made under Rule 26(g). On matters relating to a deposition being taken outside the state, the court may order that an application for an order to the deponent be made to any court having general civil jurisdiction in the place where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 30(b)(5) or 34, fails to respond that inspection will be permitted as requested or fails to produce or to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions by Court in Place Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the place in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 26(g), Rule 35 or subdivision (a) of this rule, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 26(g) or Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take a deposition, after being served with a proper notice, or to comply with a properly served request for production under Rule 30(b)(5), without having made an objection thereto, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

RULE 66. CONTEMPT PROCEEDINGS

(a) In General.

(1) Purpose and Scope. This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive and remedial sanctions for contempt. This rule shall not apply to the imposition of sanctions specifically authorized by other provisions of these rules or by statute.

(2) Definitions. For purposes of this rule:

(A) "Contempt" includes but is not limited to:

(i) disorderly conduct, insolent behavior, or a breach of peace, noise or other disturbance or action which actually obstructs or hinders the administration of justice or which diminishes the court's authority; or

(ii) failure to comply with a lawful judgment, order, writ, subpoena, process, or formal instruction of the court.

(B) A punitive sanction is a sanction imposed to punish a completed act of contempt or to terminate any contempt which obstructs the administration of justice or diminishes the court's authority.

(C) A remedial sanction is a sanction imposed to coerce the termination of an ongoing contempt or to compensate a party aggrieved by contempt.

(D) A summary proceeding is as described in subdivision (b).

(E) A plenary proceeding is as described in subdivisions (c) and (d).

(F) "Court" means a Judge of the District, Probate or Administrative Court or a Justice of the Superior or Supreme Judicial Court.

(3) Designation of Appropriate Proceeding. The court or the moving party must designate the nature of the contempt claimed and the sanctions sought. Where both punitive and remedial sanctions are being sought, the court must use procedures for punitive sanctions.

(b) Summary Proceedings.

(1) Applicability. A summary proceeding under this subdivision may be used when punitive or remedial sanctions are sought for contempt occurring in the actual presence of the court and seen or heard by the court.

(2) Procedure. A contempt may be punished summarily if the court certifies that the court saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. Before imposition of sanctions the court shall allow the alleged contemnor an opportunity to be heard in defense and mitigation.

If the court finds that the alleged contemnor committed the contempt, the court shall issue a written order that directly or by incorporation of the record:

(A) specifies the conduct constituting the contempt;

(B) certifies that the conduct constituting contempt occurred in the presence of the court and was seen or heard by the court;

(C) contains the sanction imposed.

(3) Punitive Sanctions. The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In a summary proceeding the court may impose a punitive sanction that consists of either imprisonment for a definite period not to exceed 30 days or a fine of a specified amount not to exceed \$5000 or a combination of imprisonment and fine.

(4) Remedial Sanctions. The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) Appeal. A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

(c) Plenary Proceedings for Punitive Sanctions.

(1) Applicability. A plenary proceeding under this subdivision must be used when punitive sanctions are sought for contempt occurring outside the presence of the court. A proceeding under this subdivision may be used when punitive sanctions are sought for contempt occurring in the presence of the court

and must be used when a punitive sanction in excess of that provided in subdivision (b), paragraph (3) is contemplated.

(2) Procedure. A proceeding under this subdivision shall proceed as provided by the Maine Rules of Criminal Procedure for the prosecution of a Class D crime, except as hereinafter provided.

(A) Initiation. A proceeding under this subdivision is initiated by the court on its own motion or at the suggestion of a party.

(B) Request for Prosecution. The court may request that an attorney for the state prosecute the proceeding. If that request is refused, the court may appoint a disinterested member of the bar to act as prosecutor.

(C) Complaint. The prosecuting attorney shall draft a complaint and summons which shall be served upon the alleged contemnor in accordance with the Maine Rules of Criminal Procedure. The complaint shall

(i) state the essential facts constituting the contempt and whether remedial as well as punitive sanctions are sought; and

(ii) specify the time and place of a hearing.

(D) Trial. The date of trial shall allow the alleged contemnor a reasonable time for the preparation of a defense. Trial shall be to the court, except that, if the court concludes that in the event of an adjudication of contempt a punitive sanction of imprisonment of more than 30 days or a serious punitive fine may be imposed, trial shall be to a jury unless waived by the alleged contemnor.

(E) Failure to Appear. An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant.

(3) Punitive Sanctions. The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In order to impose a punitive sanction, the court must find beyond a reasonable doubt that

(A) the alleged contemnor has intentionally, knowingly or recklessly failed or refused to perform an act required or has done an act prohibited by a court order; and

(B) it was within the alleged contemnor's power to perform the act required or refrain from doing the prohibited act.

(4) Remedial Sanctions. The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) Appeal. A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

(d) Plenary Proceedings for Remedial Sanctions.

(1) Applicability. Unless remedial sanctions are sought in plenary punitive proceedings under subdivision (c) of this rule, a plenary remedial proceeding under this subdivision must be used when remedial sanctions are sought for contempt occurring outside the presence of the court. A proceeding

under this subdivision may be used when remedial sanctions are sought for contempt occurring in the presence of the court.

(2) Procedure.

(A) Initiation. A proceeding under this subdivision, or a request for remedial sanctions in a proceeding under subdivision (b) or (c) of this rule, is initiated by the court on its own motion or at the suggestion of a party. The motion of a party shall be under oath and set forth the facts that give rise to the motion or shall be accompanied by a supporting affidavit setting forth the relevant facts.

(B) Notice. The court shall set the matter for hearing on oral testimony, depositions, or affidavits and shall order that a contempt subpoena be served on the alleged contemnor. The subpoena shall set forth the title of the action and the date, time, and place of the hearing and shall allow the alleged contemnor a reasonable time to file an answer and prepare a defense. The subpoena may include an order to request documents requested by the moving party. The subpoena shall contain a warning that failure to obey it may result in arrest and that if the court finds the alleged contemnor to have committed contempt, the court may impose sanctions that may include fines and imprisonment, or both.

(C) Service. The contempt subpoena shall be served with a copy of the court order or of the motion and any supporting affidavit upon the alleged contemnor. Service upon an individual shall be made in hand by an officer qualified to serve civil process. Service upon a party that is not an individual shall be made by any method by which service of a civil summons may be made. Service shall be completed no less than 10 days prior to the hearing unless a shorter time is ordered by the court.

(D) Hearing. All issues of law and fact shall be heard and determined by the court. The alleged contemnor shall have the right to be heard in defense and mitigation. In order to make a finding of contempt, the court must find by clear and convincing evidence that:

(i) the alleged contemnor has failed or refused to perform an act required or continues to do an act prohibited by a court order, and

(ii) it is within the alleged contemnor's power to perform the act required or cease performance of the act prohibited.

(E) Failure to Appear. An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant and may be subject to a default judgment.

(F) Order. In the event that the court makes a finding of contempt, the court shall issue an order which specifies the sanction to be imposed.

(G) Appeal. A person upon whom a remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Civil Procedure.

(3) Remedial Sanctions. The court may impose any of the following sanctions on a person adjudged to be in contempt in a proceeding seeking remedial sanctions. The court may also order such additional relief as has heretofore been deemed appropriate to facilitate enforcement of orders, such as appointment of a master or receiver or requirement of a detailed plan or other appropriate relief. An order containing a remedial sanction shall contain a clear description of the action that is required for the contemnor to purge the contempt.

(A) Coercive Imprisonment. A person adjudged to be in contempt may be committed to the county jail until such person performs the affirmative act required by the court's order.

(B) Coercive Fine. A person adjudged to be in contempt may be assessed a fine in a specific amount, to be paid: (i) unless such person performs an affirmative act required by the court's order; or (ii) for each day that such person fails to perform such affirmative act or continues to do an act prohibited by the court's order.

(C) Compensatory Fine. In addition to, or as an alternative to, sanctions imposed under subparagraph (A) or (B) of this paragraph, if loss or injury to a party in an action or proceeding has been caused by the contempt, the court may enter judgment in favor of the person aggrieved for a sum of money sufficient to indemnify the aggrieved party and to satisfy the costs and disbursements, including reasonable attorney fees, of the aggrieved party.

RULE 80. DIVORCE AND ANNULMENT

(a) Applicability of Rules. These Rules shall apply to actions for divorce, annulment, judicial separation, separate support, and determination of parental rights and responsibilities, except as otherwise provided in this rule.

(b) Complaint; Counterclaim; Joinder. In an action under this rule the plaintiff shall use the court approved complaint form or incorporate into the complaint prepared by the plaintiff all of the information on the court form. The complaint shall be signed by the plaintiff. A complaint containing the child custody information required by 19-A M.R.S.A. § 1710 shall be signed under oath. When the residence of the defendant can be ascertained, it shall be stated in the complaint. When the residence of the defendant is not known by the plaintiff and cannot be ascertained by reasonable diligence, the complaint shall so allege. No counterclaim shall be permitted in any action under this rule except for divorce, annulment, separate support, or a determination of parental rights and responsibilities. Failure of the defendant to file a counterclaim permitted by this subdivision shall not bar a subsequent action therefor. A defendant shall also file under oath the information related to children required under 19-A M.R.S.A. § 1710.

(c) Filing of Financial Affidavits and Work Sheets. In any proceeding under this rule in which child support is an issue, the parties shall exchange and file child support affidavits and, child support work sheets as required by 19-A M.R.S.A. § 2004 and, if applicable, the rules of the Family Division. In any proceeding under this rule in which there is a dispute about either a division of property or an award of spousal support the parties, prior to mediation or within 60 days after the party's answer and response, whichever is earlier, shall exchange and file a financial statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and non-marital property. Financial statements, child support affidavits and child support work sheets shall be filed on forms that the Supreme Judicial Court may from time to time prescribe by administrative order.

All child support affidavits and financial statements shall be signed by the party under oath. The justice or judge may require during the pendency of any action involving a financial order that a new child support affidavit or financial statement containing current information be filed by the parties.

Any financial statement or child support affidavit filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public agencies charged with responsibility for the collection of support, as necessary.

If a party fails to file any affidavit, worksheet, or statement required by this rule, the court may make such orders in regard to such failure as are just, including those specified in Rule 37(b)(2), as appropriate.

(d) Orders Prior to Judgment. At any time prior to judgment in any proceeding under this rule in which the court has personal jurisdiction over the parties, the court, on motion after notice served not later than 7 days before the hearing unless a shorter time is ordered by the court, may order either party to pay to the other party or to that party's attorney sufficient money for the defense or prosecution thereof, and to make reasonable provision for that party's separate support; may make such orders as it deems proper for the allocation of parental rights and responsibilities for any minor children, including support; may prohibit either party from imposing any restraint on the personal liberty of the other; and may dissolve or modify a preliminary injunction entered under 19-A M.R.S.A. § 852 and 903. In any action under this rule in which the court lacks personal jurisdiction of the defendant, the court may at any time prior to judgment, on motion after notice served not later than 7 days before the hearing unless a shorter time is ordered by the court, enter any of the foregoing orders that it deems proper that does not involve the payment of, or the allocation of responsibility for the payment of, money.

The provisions of Rule 7(b)(3), (c), and (e) shall not apply to motions for orders prior to judgment under this subdivision. A motion for an order under this subdivision shall be accompanied by a draft order that grants the motion and

specifically states the relief to be granted. If child support is in issue, the motion shall be accompanied by a child-support affidavit and worksheet.

Costs may be taxed and counsel fees may be ordered on any motion under this subdivision and the court may in all cases enforce obedience as in other actions. Execution for counsel fees shall not issue until after entry of final judgment.

(e) Guardian Ad Litem. Notwithstanding the provisions of Rule 17(b), a minor party to any proceeding under this rule need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Whenever it shall appear to the court to be in the best interests of a minor child of the parties to a proceeding under this rule, the court may on its own motion or on motion of a party, appoint a guardian ad litem. The court may make such provision for payment of a guardian ad litem by the parties as it deems necessary and proper.

(f) No Judgment Without Hearing; Appearance by Defendant; Judgments to Be Final. No judgment, other than a dismissal for want of prosecution, shall be entered in an action under this rule except after hearing, which may be ex parte if the defendant does not appear. Even though the defendant does not file an answer, the defendant may, upon entering a written appearance before commencement of hearing on issues of parental rights and responsibilities for children, alimony, support, counsel fees, and division of marital or non-marital property, be heard on those issues. Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a divorce, annulment, disposition of property under 19-A M.R.S.A. § 953, or other disposition, award, or division of property incident upon a divorce or annulment, other than a temporary order under subdivision (d) of this rule, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

(g) Discovery. In any proceeding under this rule, discovery on issues of alimony, support, counsel fees, and disposition of property may be had as in other actions, but only after the parties have exchanged and filed financial statements. On other issues discovery shall be had only by order of the court for good cause shown.

(h) Pretrial Conference. Rules 16 and 16A shall not apply to actions under this rule, except that on request of a party or on its own motion the court may order a pretrial conference to be held as provided in Rule 16(f) or Rule 16A as appropriate. An action shall be transferred to the trial list by order of the court.

(i) Time of Trial. An action for divorce or annulment shall not be in order for hearing until 60 days or more after service of the summons and complaint; nor shall it be in order for hearing until there is on file with the court a statement signed by the plaintiff, which may be contained in the complaint, stating whether any divorce or annulment actions have previously been commenced between the parties, and if so, the designation of the court or courts involved and the disposition made of any such actions.

(j) Filing of Real Estate Certificate. In every divorce action under this rule in which any party has an interest in real estate, the parties shall file with the court, at least three days prior to the hearing, a certificate that includes the book and page numbers of an instrument that describes the real estate, the applicable Registry of Deeds, and the town, county and state where the real estate is located.

(k) Post-judgment Relief. Except as otherwise provided in Title 19-A:

(1) Any proceedings for modification or enforcement of the judgment in an action under this rule shall be on motion for post-judgment relief. The motion shall be served on the opposing party in accordance with Rule 4, except that when a motion is made in response to a motion filed by a party represented by an attorney, the responsive motion may be served upon the attorney in accordance with Rule 5(b). The opposing party shall file a memorandum in opposition to the motion, including all objections, denials, and affirmative defenses, in accordance with Rule 7(c). The failure to file a memorandum in opposition may permit entry of the modified judgment by default in accordance with Rule 55. The motion and any opposing memorandum shall be accompanied, as appropriate, by the affidavits, worksheets, or financial statements required by subdivision (c) of this

rule. Post-Judgment Motions filed in an action under this rule must be accompanied by a properly completed Summary Sheet, which is available from the clerk.

(2) No final order modifying a judgment shall be entered on a motion for post-judgment relief except after hearing in accordance with subdivision (f) of this rule, unless the parties under oath certify to the court that there is a stipulated judgment or amendment and no hearing is necessary.

(3) Upon motion of a party made within 5 days after notice of a decision under this rule, or upon the court's own motion, the justice or judge who has entered an order modifying a judgment on a motion for post-judgment relief shall make findings of fact and conclusions of law in accordance with Rule 52(a).

(l) Transfer From the Superior Court to the District Court. Upon agreement of the parties any action for divorce or annulment pending in the Superior Court may be transferred to the District Court in accordance with the provisions of this subdivision. Transfer shall be effected by filing a notice thereof agreed to by the parties or their counsel and by paying to the clerk of the Superior Court fees in the same amount required in the District Court on removal to the Superior Court, including the entry fee in and the cost of forwarding the action to the District Court. No transfer may be effected at a time while the court is hearing or has under advisement the merits of the action or any motion either prior to or after judgment. The action may be transferred to a division of the District Court, designated by the notice of transfer, which lies within the county in which either party resided at the commencement of the action; provided that after a judgment for divorce or annulment has become final, the action may be transferred to any division of the District Court. The clerk shall thereupon file a copy of the record and all original papers in the action in the District Court in that division. Thereafter the action shall be prosecuted as if all prior proceedings in the action had taken place in the District Court.

(m) Enforcement. The rights and remedies of parties to any proceeding under Title 19-A may be enforced under Rule 66. The availability of Rule 66 does not

limit the inherent or statutory authority of the court to impose other remedies or relief as allowed by law.

RULES FOR THE FAMILY DIVISION OF THE MAINE DISTRICT COURT

I. SCOPE AND AUTHORITY

A. Establishment of Family Division. Pursuant to 4 M.R.S.A. § 183, a Family Division is established within the Maine District Court. The Family Division has jurisdiction over the following matters: divorce, annulment, judicial separation, parental rights and responsibilities, paternity, child support, including cases brought under the Uniform Interstate Family Support Act, emancipations, visitation rights of grandparents, child protection, protection from abuse actions, cases brought under the Maine Juvenile Code, and any post-judgment motions arising from these actions. Eight Family Case Management Officers (CMOs) are permanently assigned to the Family Division. To achieve statewide coverage, the Chief Judge of the District Court shall assign CMOs to serve in designated regions. Notwithstanding these assignments, a CMO may serve at any District Court location without the necessity of a formal order of cross-assignment. All District Court judges shall serve in the Family Division. The Chief Judge may assign judges to preside in designated regions.

B. Calendars. The Family Division shall have a Domestic Relations Calendar, a Child Protection Calendar, a Protection from Abuse Calendar, and a Juvenile Calendar. The Domestic Relations Calendar includes divorce, judicial separation, parental rights and responsibilities, paternity, and child support actions and such other matters subject to the jurisdiction of the Family Division that the Chief Judge designates. Judges and Family Case Management Officers shall handle matters on the Domestic Relations Calendar. The Child Protection Calendar includes proceedings brought under Title 22 of the Maine Revised Statutes. The Protection from Abuse Calendar includes proceedings brought under Title 19-A, chapter 101. The Juvenile Calendar includes proceedings brought under Title 15. Only judges shall preside over matters on the Child Protection, Protection from Abuse and Juvenile Calendars, except that a judge may refer a protection from abuse or child protection case to a CMO for a decision on child support.

C. Family Case Management Officers. In all proceedings on the Domestic Relations Calendar involving minor children, Family Case Management Officers (CMOs) shall have authority to: conduct case management conferences, issue case

management and pretrial orders, issue interim child support orders and other interim orders, issue final orders establishing or modifying child support, and issue orders in child support enforcement actions. In an uncontested proceeding or with the consent of the parties, CMOs may hear and decide other matters and may issue divorce judgments, paternity judgments, judicial separation decrees, and interim and final orders establishing parental rights and responsibilities. Nothing in these rules shall prohibit a judge from managing a case as provided for in these rules and any policies or procedures issued to implement them.

II. MISSION AND GOALS

A. Mission. The Family Division's mission shall be to "provide a system of justice that is responsive to the needs of families and the support of their children." 4 M.R.S.A. § 183.

B. Goals. The goals of the Family Division are:

1. To promote a timely resolution of family cases.
2. To address promptly the establishment or modification of child support and to promptly enforce compliance with support orders and all other orders in family cases.
3. To provide effective case management for family cases involving children.
4. To facilitate parenting arrangements in the best interest of children at an early stage in the proceedings.

5. To promote education for the parties about parenting issues and to inform litigants about community services available to help them address family problems.
6. To provide court users with a better understanding of court processes.
7. To identify domestic relations cases in which there is domestic abuse or a power imbalance in order to protect children and adults and to ensure a fair resolution of the case.
8. To promote civility in divorce and other family law proceedings.
9. To minimize the harm to children caused by family law cases.
10. To make appropriate referrals to alternative dispute resolution services.

III. DOMESTIC RELATIONS CALENDAR

A. Case Management

1. Case Management Conferences. Whenever a complaint or motion is filed in any proceeding involving minor children over which a Case Management Officer

has jurisdiction, the parties and their counsel are required to attend a case management conference with a CMO. The parties should expect matters such as the following to be discussed at the initial conference or any subsequent conference: issues in dispute, interim arrangements for the children, including residence, parent/child contact, health insurance and support, interim responsibility for payment of periodic debts, interim spousal support, mediation, deadlines for moving the case to resolution, exchange or disclosure of information, evidentiary matters to be resolved prior to trial, responsibility for payment of fees, including attorney fees, the need for one or both parties to participate in an educational program, paternity testing, the appointment of a guardian ad litem, a psychological evaluation, an investigation by the Dept. of Human Services pursuant to 19-A M.R.S.A. § 905, a job search, a pretrial or status conference, an uncontested hearing date, and other matters pertinent to the case. Following the conference, the CMO will enter a case management order that will determine the course of the proceedings.

In appropriate circumstances, a CMO may dispense with a conference and set the matter promptly for hearing, may enter agreements on the record at the conference, may hold a hearing immediately following the conference, or may advise the parties the matter will be referred to a judge or placed on a judicial calendar. A CMO may schedule additional case management conferences as needed.

2. Child Support Affidavits. The parties must exchange and file with the court clerk completed child support affidavits. Except for actions initiated by the Department of Human Services pursuant to 19-A M.R.S.A. §§ 1551 et seq., 1601 et seq., and 1652, the plaintiff or moving party shall serve and file a completed affidavit with the complaint or motion. If the Department of Human Services initiates a modification of a support order pursuant to 19-A M.R.S.A. § 2009 and is unable to secure the affidavit of a custodial parent who is in receipt of public assistance, the Department may submit an affidavit based upon its information and belief regarding the custodial parent's income. A court clerk shall refuse incomplete filings. The defendant or responding party shall serve and file a completed affidavit with the response or entry of appearance. In all other respects, the service and filing of the pleadings and other documents with the court is governed by the Maine Rules of Civil Procedure which assure that the opposing party gets a copy.

3. Notice of Conference. Except for motions filed pursuant to 19-A M.R.S.A. § 2009, the parties will be notified of the date and time of the case management conference within two weeks after the filing in court of the proof of service of the complaint or motion. The conference will be held after the time for filing a response has passed. When a motion is filed pursuant to section 2009, the clerk will schedule a conference after receiving a response to the motion. If there is no response, a conference will not be scheduled, and the court will proceed in accordance with the provisions of section 2009.

4. Requests to Reschedule. Requests to reschedule a conference must be in writing and may be granted for good cause shown. An agreement of the parties to continue and an assurance that the children's needs are being met constitutes good cause.

5. Waiver of Conference.

a. Complaint. Instead of attending an initial case management conference following the filing of a complaint, the parties may file a certificate stating that they have reached a temporary agreement on all issues relating to the children. The certificate must be signed by both parties or their attorneys, indicate what issues, if any, remain unresolved in the case, and include a date for a status conference or a final hearing not to exceed 90 days from the date of the certificate. The parties are responsible for obtaining a date from the court. With the certificate, the parties must submit for the CMO's review child support affidavits, worksheets, a written agreement on parental rights and responsibilities that addresses the children's residence, support or maintenance, and parent-child contact, and if an interim order is requested, a proposed order incorporating the terms of the agreement. The CMO may require the parties to attend a case management conference if the agreement appears inequitable on its face, provides for a deviation from the Child Support Guidelines, there is a history of domestic abuse, or for any other reason. On the written representation of either party that the agreement is not being followed, a case management conference will be scheduled.

b. Post-judgment Motions. Instead of attending a case management conference on a post-judgment motion, the parties may file a certificate stating that the motion is unopposed or the parties have reached an agreement. The certificate must be signed by both parties under oath, state that no hearing is necessary, and be accompanied by a stipulated order. When the proceeding is a motion to modify child support and the responding party does not request a hearing, the conference may be waived and the CMO may enter an order pursuant to 19-A M.R.S.A. § 2009(6).

B. Interim Relief

1. Interim Orders Without Hearing. At a case management conference, a CMO may enter interim orders with the consent of the parties or when a party is in default. Whether or not the parties agree, a CMO may enter a case management order. At the initial case management conference, the parties shall be advised of their right to have a judge determine interim parental rights and responsibilities. To exercise this right, a party must file a written request with the court clerk either before or at the time of the conference. In the absence of such a written request, the parties' consent will be presumed, and a CMO may determine interim parental rights and responsibilities.

2. Mediation. When the parties cannot reach an interim agreement on all issues, mediation shall be promptly scheduled. The CMO may waive the required mediation for good cause shown. An agreement reached through mediation shall be reviewed by a CMO. If approved, it shall be entered as an interim order.

3. Interim Orders After Hearing. If, after mediation, the parties have not reached an interim agreement, the CMO shall conduct a hearing on the contested issues and enter an interim order. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

C. Proceedings After Entry of Interim Order

1. Uncontested Proceedings. If there are no issues in dispute following the entry of an interim order, the case shall be scheduled for final hearing before a CMO or a judge.

2. Contested Proceedings. When issues remain in dispute, the case shall be referred to mediation, unless mediation occurred prior to a contested hearing on interim issues. On motion supported by affidavit, mediation may be waived for extraordinary cause shown. In the discretion of the CMO, a matter previously mediated may be referred to mediation again.

a. If the issues are resolved by mediation, the case shall be scheduled for a final, uncontested hearing before a CMO or a judge.

b. When issues remain in dispute, the case shall be scheduled for a final, contested hearing. If child support is the only contested issue, the matter shall be scheduled before a CMO. When other issues are in dispute, a judge shall preside at the final hearing.

D. Post-Judgment Proceedings

1. Motions to Modify. The case management process set forth in these rules shall be used for motions to modify.

2. Motions to Enforce. A motion to enforce a judgment or order shall be addressed in a timely manner. To accomplish this, a CMO may dispense with a case management conference and proceed directly to hearing, may hear the matter

at the conclusion of a conference, or may refer the case for prompt scheduling on a judicial calendar.

3. Contempt. Contempt proceedings shall be conducted by a judge in accordance with 14 M.R.S.A. § 252, M.R. Civ. P. 66 and M.R. Crim. P. 42.

E. Hearings Conducted by CMOs

Except as otherwise provided in these rules, the Maine Rules of Civil Procedure and Maine Rules of Evidence shall govern proceedings conducted by CMOs. A CMO shall take the testimony of witnesses under oath and shall rule on the admissibility of evidence. On the request of a party or in the discretion of the CMO, contested hearings shall be tape-recorded.

F. Final Orders

1. Child support. A CMO may enter final orders relating to child support, including orders to establish, modify or enforce child support obligations, whether or not the matter is contested.

2. Other matters. A CMO may enter final judgments or orders on other issues by agreement of the parties or when the matter is unopposed. A CMO may review and approve or reject a settlement agreement. When rejecting a settlement agreement, a CMO may refer the parties to mediation or direct them to proceed to a case management conference or trial before a judge.

G. Appeal of CMO Orders.

1. Case Management and Interim Orders. A CMO's case management and interim orders are effective when signed and remain effective until a final order is signed. An interim order does not constitute the law of the case, and the issues may be decided de novo at the final hearing. A CMO's order is enforceable as an order of the court and is entitled to full faith and credit.

2. Final Orders. Any party who wishes to appeal a CMO's final order shall file an objection to the final order in the District Court within 21 days of the entry of that order. If no objection is filed, the parties are deemed to have waived their right to object and to appeal, and the CMO's final order shall become the judgment of the court and have the same effect as any final judgment signed by a District Court judge.

a. The objection must specifically state the grounds alleged for rejecting or modifying the order. If a party fails to comply with these requirements, the objection may be dismissed with prejudice. An objection shall not be dismissed solely because it is erroneously captioned as a "motion," "appeal," "notice of appeal" or some other form of pleading.

b. When an objection is filed, a judge shall review the record established before the CMO with or without a hearing and may adopt, modify or reject the order, may set the matter for further hearing before a judge or CMO or recommit it with instructions.

c. A CMO's order relating to the care, custody and support of minor children or to the separate support or personal liberty of a person is effective when signed and remains in effect until modified or rejected by a judge.

d. Every written final order of a CMO shall state that the parties have a right to object to the CMO's final order and the consequences if the parties fail to object.

3. Appeals. An appeal from a judgment entered after objection to a final order of a CMO pursuant to these rules shall be taken in accordance with the Maine Rules of Appellate Procedure. No appeal may be taken from a judgment entered without objection to the final order of a CMO.

4. Waiver of Rights. The parties may waive their right to object and request immediate confirmation of a CMO's final order. They may also waive their right to appeal.

H. Sanctions.

1. Failure to Appear. If a party fails to appear at a case management, pretrial or status conference, hearing or mediation, without good cause, the party's complaint, motion or other pleading may be dismissed by the CMO with or without prejudice. In addition, the CMO may issue an interim, status conference or pretrial order, a default, or a default judgment. Costs may be taxed as allowed by the Maine Rules of Civil Procedure, as well as the cost of mediation as reported by the mediator, and reasonable attorney's fees.

2. Failure to File Child Support Affidavit. A child support order will be entered notwithstanding a party's failure to file a child support affidavit. If a party fails to file a child support affidavit without good cause, the CMO or the court may do any of the following:

a. Set that party's gross income in accordance with:

(1) Minimum wages for a 40-hour work week;

(2) Maine Department of Labor statistics;

(3) An affidavit submitted by or testimony of the opposing party; or

(4) Information included in that party's most recent federal income tax return.

b. Enter an order requiring that party to release all requested information to a CMO, a Judicial Department financial screener, or the court. Failure to comply with the order may result in a finding of contempt punishable by a fine or jail sentence.

c. Award attorney fees.

I. Effective Date. The rules governing the District Court's Domestic Relations Calendar shall apply to all new actions and post-judgment motions filed on or after April 6, 1998. By agreement of the parties or upon order of the court, a matter pending on April 6, 1998, may be placed on the Domestic Relations Calendar.

J. Inconsistency with the Maine Rules of Civil Procedure. To the extent there is any inconsistency between the Family Division Rules and the Maine Rules of Civil Procedure, the Family Division Rules shall govern all proceedings on the Domestic Relations Calendar.

K. Confidentiality. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed by the Clerk and not disclosed to the other party or to the general public. Disclosure may be ordered after a hearing in which the court takes into consideration the health, safety and liberty of the party or child and determines that the disclosure is in the interest of

justice. District Court Judges and Case Management Officers are authorized to enter any orders in furtherance of the purposes of this section.

APPENDIX C

SOURCES OF MAGISTRATE AUTHORITY

4 M.R.S.A. § 183.....	C1
Administrative Order JB-05-18.....	C4
Administrative Order JB-06-1.....	C6

TITLE 4. JUDICIARY
CHAPTER 5. DISTRICT COURT

4 M.R.S. § 183 (2006)

§ 183. Family Division of District Court

There is established within the District Court a Family Division that has jurisdiction over family matters filed in District Court. The Family Division shall provide a system of justice that is responsive to the needs of families and the support of their children. The Supreme Judicial Court may adopt administrative orders and court rules governing the practice, procedure and administration of the Family Division. These practices and procedures must include, but are not limited to, education for the parties, case management and referral services to mediation and other alternate dispute resolution techniques.

1. FAMILY LAW MAGISTRATES. The Chief Judge of the District Court, with the approval of the Chief Justice of the Supreme Judicial Court, shall employ family law magistrates. In selecting family law magistrates, the Chief Judge shall give proper consideration to achieving statewide geographical representation in the Family Division.

A. Family law magistrates must be members of the Bar of this State and must have experience in the area of family law. Other qualifications may include interest, training or experience in mediation and other alternate dispute resolution techniques, domestic violence, child development, family dynamics and case management.

B. Family law magistrates shall devote themselves solely to the official duties of the position. Family law magistrates may not engage in the private practice of law or in any employment, occupation or business interfering with or inconsistent with the discharge of their duties. The Chief Judge of the District Court shall determine the salaries of the family law magistrates.

C. Family law magistrates are governed by the Maine Code of Judicial Conduct. Family law magistrates serve at the pleasure of the Chief Judge of the District Court.

D. Family law magistrates shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

- 1) Interim orders in actions involving the establishment, modification or enforcement of child support;

2) Interim orders in actions involving divorce, legal separation, paternity or parental rights, including interim orders in postjudgment proceedings arising out of these actions, except that a contested motion concerning interim parental rights and responsibilities, excluding interim child support orders, may be determined by the family law magistrate only if both parties consent to determination of the issue or issues in dispute by the family law magistrate;

2-A) Parental rights and responsibilities and parent-child contact orders entered pursuant to *Title 19-A, section 4006*, subsection 5 and section 4007, subsection 1, paragraph G to make such orders consistent with subsequently entered orders in matters included in subparagraphs (1), (2) and (3);

3) Final orders in any of the matters included in subparagraphs (1) and (2) when the proceeding is uncontested;

4) Final orders in a contested proceeding when child support is the only contested issue;

4-A) Applications for writs of habeas corpus to facilitate the attendance of proceedings by and return of a party who is incarcerated;

4-B) Requests for access to confidential Department of Health and Human Services child protective records in accordance with Title 22, section 4008. The family law magistrate may review records in camera to determine whether to grant access; and

5) Other actions assigned by the Chief Judge of the District Court.

E. Interim orders in any of the matters included in paragraph D, subparagraphs (1), (2) and (2-A) are effective immediately and are subject to de novo review by a judge at the final hearing. Final orders in any of the matters included in paragraph D, subparagraphs (3) and (4) are subject to appellate review in the same manner as any final order of the District Court. The family law magistrate shall inform the parties of the rights of review established in this paragraph.

F. A family law magistrate has the power to impose punitive and remedial sanctions in a summary proceeding for contempt occurring in the actual presence of the family law magistrate and seen or heard by the family law magistrate. The Maine Rules of Civil Procedure

relating to summary contempt proceedings apply to a family law magistrate exercising the contempt power under this paragraph.

G. The Chief Judge of the District Court may allow family law magistrates to wear robes of any color other than black when presiding over any proceeding.

2. **ADDITIONAL STAFF.** The State Court Administrator shall provide other necessary staff to the Family Division, within the limits of funds available, and shall seek to take full advantage of federal funding, including reimbursements.

3. **REPORTS.** The State Court Administrator shall 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 January 15th of each odd-numbered calendar year.

A. The State Court Administrator shall evaluate the functioning of the family law magistrates in providing a system of justice that is responsive to the needs of families and the support of their children in light of the jurisdiction given to the family law magistrates under this section. The State Court Administrator shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 15, 1999 with recommendations, if any, for changing the duties provided in subsection 1, paragraph D.

B. The State Court Administrator shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 15, 1999 explaining the justification for the particular geographic assignments of the family law magistrates.

4. **PILOT PROJECT.** Notwithstanding the jurisdictional limitations of subsection 1, the Chief Justice of the Supreme Judicial Court may establish a pilot project in which one or more family case management officers have jurisdiction to hear and dispose of all elements of a divorce action when both parties consent. Orders of the family case management officer are subject to appellate review in the same manner as any final order of the District Court.

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-05-18

FAMILY LAW MAGISTRATE[1] AUTHORITY

Effective: August 1, 2005

In addition to any authority granted pursuant to statute or rule, by assignment from the Chief Judge of the District Court, Family Law Magistrates are authorized to do the following in all Family Division cases:

1. Hear, dispose of, and enter orders on Petitions to Proceed In Forma Pauperis.
2. Hear, dispose of, and enter orders on all motions, except motions pursuant to Maine Rules of Civil Procedure 12(b)(1), 12(b)(2) and 66, unless otherwise prohibited by statute or by court rule.
3. Hear, dispose of, and enter orders on requests for attorney fees and costs.
4. Impose sanctions for a party's failure to comply with discovery, including, but not limited to those set forth in Maine Rule of Civil Procedure 37, but excluding any sanctions or penalties based upon a determination of contempt cognizable under Maine Rule of Civil Procedure 66.
5. Issue Writs of Habeas Corpus and remand orders.
6. Enter remand orders in cases in which an incarcerated party is present at a proceeding before a Family Law Magistrate pursuant to a Writ of Habeas Corpus.

In addition, Family Law Magistrates are authorized to administer oaths and affirmations in the conduct of all matters in and relating to the Family Division of the Maine District Court, unless another officer is specifically required to do so.

For the Court,

Leigh I. Saufley
Chief Justice

Promulgation Date: July 13, 2005

Historical Derivation of JB-05-18:

Family Division Of The Maine District Court
AO DC-98-4, Dated: November 2, 1998
Signed by: Michael N. Westcott, Chief Judge, Maine District Court

AO SJC 114, Dated: April 3, 1998
Signed by: Daniel E. Wathen, Chief Justice, Maine Supreme Judicial Court

[1] Family Law Magistrate is a new title which replaces Case Management Officer. The new title will become effective on September 17, 2005. *See* P.L. 2005, ch. 384 (effective September 17, 2005). In the context of this order, the title Family Law Magistrate is intended to apply to Case Management Officers until their titles change in September 2005.

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-06-1

FAMILY DIVISION MAGISTRATE PILOT PROJECT

Effective: May 1, 2006

WHEREAS, the Chief Justice of the Supreme Judicial Court has been authorized to establish a pilot project in which one or more Family Law Magistrates have jurisdiction to hear and dispose of all elements of a divorce action when both parties consent;

WHEREAS, Family Law Magistrates have not previously been authorized to issue final orders in contested matters, other than Child Support Orders;

NOW, THEREFORE, it is ORDERED that the Family Law Magistrates are authorized to hear and dispose of all elements of a divorce action with children when both parties consent, subject to the Project Rules appended hereto which shall govern the pilot project.

For the Court,

LEIGH I. SAUFLEY

Chief Justice

Maine Supreme Judicial Court

Promulgation Date: April 13, 2006

APPENDIX A TO JB-06-1

PROJECT RULES FOR THE FAMILY LAW MAGISTRATE PILOT PROJECT AUTHORIZED BY 4 M.R.S. § 183(4)

As a project exception to the Rules for the Family Division of the Maine District Court, Family Law Magistrates sitting in specified locations may exercise jurisdiction to hear and dispose of all elements of a divorce action with children when both parties consent.

RULES:

1. Purpose of Pilot Rules: These rules govern the Family Law Magistrates' exercise of jurisdiction to hear and dispose of all elements of a divorce action with children when both parties consent.
2. Scope of Pilot Project:
 - a. Family Law Magistrates sitting in the following courts are authorized to hear and dispose of all elements of a divorce action with children when both parties consent provided that the Family Law Magistrate determines that is reasonably likely that the hearing can be completed within two hours:
 - (i) Houlton
 - (ii) Bangor
 - (iii) Waterville
 - (iv) Lewiston
 - (v) Bridgton
 - b. In a divorce action in which a status conference or other hearing before a Family Law Magistrate has already been scheduled, Family Law Magistrates sitting in the following courts are authorized to hear and dispose of all elements of a divorce action with children when both parties consent provided that the Family Law Magistrate can complete the hearing within the time allocated to the case:
 - (i) Caribou
 - (ii) Presque Isle
 - (iii) Dover
 - (iv) Ellsworth

- (v) Skowhegan
- (vi) Rumford
- (vii) Rockland
- (viii) West Bath
- (ix) Augusta
- (x) Portland
- (xi) Springvale
- (xii) Biddeford

3. Procedure:

- a. If both parties agree, they may request that a Family Law Magistrate hear and dispose of all elements of their divorce action with children. The parties shall submit their request on the form, appended hereto as Form A. Neither party shall file such request unless the other party is in agreement, and has signed the form. This shall be the exclusive means of submitting a request.
 - b. Upon receipt of the completed form, the clerk, in consultation with the Family Law Magistrate, may schedule a contested hearing before a Family Law Magistrate.
4. Appeals: All appeals from or objections to final orders issued by a Family Law Magistrate pursuant to the Pilot Project shall be governed by Rule III(G) of the Rules for the Family Division of the Maine District Court.
5. Miscellaneous: Matters not otherwise addressed in these project rules shall be governed by the Rules for the Family Division of the Maine District Court and the Maine Rules of Civil Procedure.

[Appendix omitted]

APPENDIX D

PROPOSED RULE AMENDMENTS

M.R. Fam. Div. III(B)(3).....	D1
M.R. Fam. Div. III(D)(3).....	D2
M.R. Fam. Div. III(H).....	D3
Proposed Expedited Hearing Rule.....	D4
Proposed Rules Form: Expedited Hearing Motion.....	D5

Proposed revision to M.R. Fam. Div. III(B)(3):

3. *Interim Orders After Hearing.* If, after mediation, the parties have not reached an interim agreement, the ~~CMO~~ magistrate ~~shall~~ may conduct a hearing on the contested issues and enter an interim order. In any case in which a party has exercised the right to have a judge decide interim parental rights and responsibilities other than child support, the matter shall be promptly scheduled for a conference or hearing before a judge.

Proposal to add the following to M.R. Fam. Div. III(D)(3):

3. *Contempt.* Contempt proceedings shall be conducted by a judge in accordance with 14 M.R.S.A. § 252, M.R. Civ. P. 66 and M.R.Crim.P. 42. In the event that, after hearing on the motion for contempt and regardless of whether the court makes a finding of contempt, the court determines that an order is necessary to achieve the purposes of the judgment or order that is the subject of the contempt motion, the court may make such order as justice requires.

RULE III(D)(3) Advisory Notes

Paragraph 3, as amended, permits the court to issue an order in reference to an underlying judgment or order solely on its own motion when deemed appropriate in the context of a hearing on a motion for contempt. The scope of such further orders is limited by the subject matter raised in the motion for contempt.

Not infrequently during the course of a motion for contempt, the court concludes that action is necessary to achieve the purpose or preserve the intent of the underlying judgment or order. This rule is intended to authorize the court to issue orders necessary to preserve or implement the court's intent in the original judgment or order. The issuance of such would include, *e.g.*, adjustments to details of visitation such as pick up or drop off times and locations, that do not alter the time allotments to each parent.

Proposed addition to M.R. Fam. Div. III(H):

H. Sanctions.

3. Failure to Comply with Discovery. If a party fails to comply with discovery, the magistrate may impose sanctions for such failure, including but not limited to those set forth in Maine Rule of Civil Procedure 37, but excluding any sanctions or penalties based upon a determination of contempt cognizable under Maine Rule of Civil Procedure 66.

M.R. Fam. Div. III Advisory Committee Notes

The addition of M.R. Fam. Div. III(H)(3) is a codification of the authority granted to magistrates through Administrative Order JB-05-18, ¶ 4.

EXPEDITED OR EMERGENCY HEARING RULE PROPOSAL

XX. Expedited Hearings: Any party, including a guardian *ad litem*, may request that the hearing on any motion filed by that party or another party be expedited. Such requests shall be in the form of a motion for expedited hearing. Motions for expedited hearing shall demonstrate extraordinary circumstances in the particular case that justify an expedited hearing, and shall be considered in light of all relevant factors, including:

1. The court's ability to provide time for expedited hearing, and the effect on other cases awaiting hearing;
2. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the best interests of a child or the parental rights of a party;
3. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the health or financial standing of a party;
4. The likelihood that denial of the motion for expedited hearing could have a substantial adverse effect on the court's ability to render a full and fair decision on any issue presented in the case;
5. Any unreasonable delay on the part of the moving party in filing the motion; and
6. Any conduct on the part of either party impairing a fair and just resolution of the issues.

The movant must state whether the non-moving party objects to the request in the motion. The non-moving party shall respond in writing within seven (7) days of filing of the motion. The judicial officer may act on the motion for expedited hearing without actual notice to other parties if the moving party has made a reasonable good-faith effort to notify other parties and if delaying action would defeat the purpose of the motion. This rule does not authorize action on any motion for substantive relief without notice and opportunity for hearing.

Any judicial officer can act on a motion for expedited hearing. The expedited hearing on the underlying motion shall be assigned to a magistrate or judge in accordance with applicable law and procedure.

The court may require mediation before conducting the expedited hearing; may require parties that the parties present testimony by way of affidavit; and may adopt any other procedure reasonably necessary to facilitate the expedited hearing.

STATE OF MAINE

_____, ss.

DISTRICT COURT

Location:

Docket No.

Plaintiff

v.

**MOTION FOR
EXPEDITED HEARING**

Defendant

The undersigned party in this action hereby moves that the hearing on the attached motion be expedited as follows:

1. Name of Motion(s), attached, on which expedited hearing is requested: _____

2. Expedited hearing is requested on or after the following date: _____.

3. Estimated length of expedited hearing: _____.

4. Reasons for requesting expedited hearing (use attached sheet if needed): _____

5. The relationships of the parties or their children are affected by the pending cases or existing orders as follows: _____

[Name and Location of all Courts, Docket Numbers & Dates of all Cases & Orders]

6. The moving party is expected to notify the other party/parties and guardian *ad litem* of this motion and to advise the court of their position(s) on the motion, unless such contact is prohibited by any order of court. If the moving party is unable to reach the other party/parties after reasonable effort, they must so indicate.

The plaintiff / defendant / guardian *ad litem* (circle those applicable) :

does / does not object to this motion for expedited hearing.

7. The moving party requests that the expedited hearing be heard by:

the next available Family Law Magistrate or Judge.

a Family Law Magistrate / Judge (circle one).

The plaintiff / defendant / guardian *ad litem* (circle those applicable) :

does / does not agree.

Dated:

Plaintiff / Defendant / GAL

APPENDIX E

PROPOSED FORM REVISIONS

Family Division Scheduling Order.....	E1
Order (Interim / Final).....	E4
Revised Certificate in Lieu of Case Management Conference.....	E8
Revised Important Information Regarding Case Management Conference.....	E11

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

_____ Plaintiff

v.

_____ Defendant

Family Division
SCHEDULING ORDER
(Prejudgment) / (Postjudgment)

After notice to the parties, a Case Management Conference was held in this matter. The following were present:

- Plaintiff
- Defendant
- Dept. of Health & Human Services
- Guardian *ad Litem* _____
- Other: _____
- Plaintiff's Attorney _____
- Defendant's Attorney _____
- Assistant Attorney General _____

Type of Case: _____

1. MATTERS REMAINING IN DISPUTE.

- Parental Rights & Respon.
- Actual or imputed income
- Marital v. Non-marital property
- Guardian *ad Litem* Appt/Fees
- Uninsured Medical Expenses
- UNCONTESTED
- Primary residence
- Spousal support
- Pensions or Benefits
- Paternity
- Tax exemption
- Rights of contact
- Real Estate
- Allocation of Debt
- Medical Insurance
- Other: _____
- Child Support
- Support Arrearage
- Personal Property
- Attorney's Fees

2. After conference, the Court ORDERS as follows:

- Uncontested Final Hearing.** If all matters are uncontested, the uncontested final hearing will take place on _____ at _____ a.m./p.m.
- Financial Statements.** If the parties are not in agreement about the division of property or an award of spousal support, each party must file his or her Financial Statement, on the form provided by the court, within twenty-one (21) days from the date of this order or before mediation, whichever is earlier.
- Deadline for Requesting a Guardian ad litem.** All requests for appointment of guardians *ad litem* shall be made in writing within fourteen (14) days from the date of mediation.
- Discovery Deadline.** To the extent discovery is permitted by rule, discovery shall be completed by _____. All discovery requests shall be served sufficiently in advance of the discovery deadline to allow time to respond.

No extensions of the discovery period will be granted except on motion demonstrating good cause and that discovery was timely and diligently conducted in good faith. Counsel shall not assume that agreements to conduct discovery beyond this deadline will be accepted by the Court. Such agreements shall not delay trial.

3. MEDIATION

- The parties are ordered to attend mediation, as follows:
 - Mediation is scheduled for _____ at _____ a.m./p.m. with _____ (name of mediator).

- The court mediation fee shall be paid as follows:
 - Plaintiff shall pay \$_____ no later than _____.
 - Defendant shall pay \$_____ no later than _____.
 - The mediation fee has been waived by the Court.

The parties desire to engage in private mediation prior to the next court date. The responsibility for payment is allocated as follows: _____.

The next court date in this matter is _____.

- Mediation has been completed.
- Mediation is waived for the following good cause: _____.

4. NEXT COURT APPEARANCE

Case Management Conference. A post-mediation case management conference is scheduled for at _____ a.m./p.m.. For good cause shown, the parties may request a waiver of the CMC, and request a final pretrial conference.

Interim Hearing. An interim hearing will be held on _____ at _____ a.m./p.m. before a Magistrate Judge. Estimated length of hearing: _____.

5. TRIAL

Estimate of Time Required for Trial. Not later than 15 days before the trial date, the parties shall confer and the plaintiff shall file with the court a good faith estimate of the number of days required for trial.

Exchange of Witness and Exhibit Lists. Not later than 15 days before the trial date, each party shall serve on all other parties a list containing the name and address for each witness expected to be called at trial and a list of exhibits to be offered or used at trial.

Expert Witness Designation. The deadline for designating expert witnesses and supplying M.R. Civ. P. 26 information to all parties is _____.

Trial.

The case shall be scheduled for trial on the _____ trailing docket.

The case shall be scheduled for trial on _____.

6. OTHER

Education. Plaintiff Defendant ordered to attend _____ by _____.

Plaintiff Defendant must file a certificate of completion of the educational program with the Clerk's Office prior to a final hearing in this matter.

Other: _____

FAILURE TO COMPLY WITH DEADLINES AS ORDERED MAY RESULT IN THE IMPOSITION OF SANCTIONS. IF THE PARTIES REACH AN AGREEMENT ON ALL ISSUES, THEY MAY FILE A WRITTEN REQUEST FOR AN UNCONTESTED HEARING AT ANY TIME.

MOTIONS TO AMEND OR ALTER THIS ORDER SHALL BE FILED WITHIN 10 DAYS OF THE DATE OF THIS ORDER.

The entry will be: "Scheduling Order filed." The Scheduling Order is incorporated into the docket by reference at the specific direction of the court."

Date: _____

Judge / Magistrate

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

_____ Plaintiff

vs.

_____ Defendant

ORDER

Interim

Final

After notice to the parties, a hearing / conference was held in this matter. The following were present:

- Plaintiff
- Defendant
- Dept. of Health & Human Services
- Guardian *ad Litem* _____
- Other: _____
- Plaintiff's Attorney _____
- Defendant's Attorney _____
- Assistant Attorney General _____

The Court finds and Orders as follows:

1. **CHILD SUPPORT, PARENTAL RIGHTS AND RESPONSIBILITIES.**

- The Child Support Order issued in this matter is incorporated by reference in this Order.
- The parties' written agreement, dated _____, is incorporated, but not merged, in this Order.
- The parties have reached an agreement on parental rights and responsibilities. The parties written agreement, attached, is hereby made the order of the Court.
- After notice to the parties, a hearing was held on the following issues: _____
- The Court orders the following:

A. Shared parental rights and responsibilities of the minor child(ren) is allocated to the parties. Under Maine law, "*Shared Parental Rights and Responsibilities*" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities, and both parents confer and make joint decisions regarding the child's welfare. Matters pertaining to the child's welfare include, but are not limited to, education, religious upbringing, medical, dental and mental health care, travel arrangements, child care arrangements and residence. Parents who share parental rights and responsibilities shall keep one another informed of any major changes affecting the child's welfare and shall consult in advance to the extent practicable on decisions related to the child's welfare.

ACCESS TO CHILD(REN)'S RECORDS. Each parent must have access to records and information pertaining to a minor child of the parties, including, but not limited to, medical, dental and school records and other information on school activities, whether or not the child resides with the parent.

RELOCATION OF CHILD[REN]'S RESIDENCE. A parent who intends to relocate the residence

of a child who is subject to this Order must provide the other parent prior actual notice at least 30 days before the intended relocation. Such notice shall include the address and, if known, the telephone number of the residence where the parent intends to relocate the child. If the relocation must occur in less than 30 days, the parent who is relocating shall provide notice as soon as possible to the other parent. If the parent who is relocating believes notifying the other parent will cause danger to the parent or the child, the relocating parent shall notify the appropriate Court of the intended relocation. The Court then having jurisdiction of the matter shall provide appropriate notice to the other parent in a manner determined to provide safety to the relocating parent and child.

Sole parental rights and responsibilities is awarded to Plaintiff Defendant because: _____

Other: _____

B. Primary physical residence of the minor child(ren) is allocated to: Plaintiff Defendant.

Primary physical residence of the minor child(ren) will be shared by the parties.

C. Reasonable rights of contact with the minor child(ren) are allocated to the Plaintiff Defendant.

Specific rights of contact with the minor child(ren) are allocated to the Plaintiff Defendant, as follows:

No rights of contact with the minor child(ren) are allocated to the Plaintiff Defendant.

2. PROPERTY AND DEBTS.

The parties' written agreement, dated _____, is incorporated, but not merged, in this Order.

The parties have reached an agreement on property and debts. The parties written agreement, attached, is hereby made the order of the Court.

After notice to the parties, a hearing was held on the following issues: _____

The Court orders the following:

A. Plaintiff Defendant shall have the right to the temporary exclusive possession of the real estate located at _____

B. Plaintiff Defendant shall be solely responsible for payment of the following items relating to the real estate: mortgage(s) installments taxes insurance repairs utility charges

Other: _____

C. Responsibility for other debts as allocated as follows: _____

D. Other: _____

3. SPOUSAL SUPPORT, HEALTH INSURANCE, INCOME WITHHOLDING.

The parties' written agreement, dated _____, is incorporated, but not merged, in this Order.

The parties have reached an agreement on spousal support. The parties written agreement, attached, is hereby made the order of the Court.

The parties agree on an Spousal Support Order and Conditional Income Withholding Order.

After notice to the parties, a hearing was held on the following issues: _____

The Court orders the following:

Beginning _____ Plaintiff Defendant shall pay spousal support in the amount of \$ _____ per week month _____.

The attached Spousal Support Order is incorporated herein by reference.

A proposed Spousal Support Order will be submitted to the Court within 14 days.

Plaintiff Defendant shall maintain health insurance for the benefit of the other party while this case is pending. _____

4. ATTORNEY'S FEES. No later than _____ Plaintiff Defendant shall pay \$ _____ to the other party's attorney for attorney's fees incurred or to be incurred by the other party in this case.

5. OTHER: _____

The entry will be "Order filed."

Orders filed with this Order and incorporated by reference herein:

Agreement on Parental Rights and Responsibilities

Child Support Order

Immediate Income Withholding Order

Spousal Support Order

Conditional Withholding Order

Date: _____

Judge / Magistrate

Copies of this Order: provided to the parties in hand mailed by the Clerk

Notice to the Parties

Pursuant to Title 4 M.R.S.A. § 183(1)(E), the parties are hereby notified of their right to have an interim order reviewed de novo at any final hearing before a judge of the District Court. Final Orders are subject to a 21 day objection period and appellate review as provided in Family Division Rule III(G).

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

_____ Plaintiff

v.

_____ Defendant

**CERTIFICATE IN LIEU OF
CASE MANAGEMENT
CONFERENCE**

1. AGREEMENT OF THE PARTIES. *(Please check the appropriate box.)*

A. **FULL FINAL AGREEMENT.** The parties certify that they have reached a full final agreement on all issues.

B. **TEMPORARY AGREEMENT.** The parties certify that they have reached a temporary agreement on all issues relating to the children.

C. This is a postjudgment action, and a court order is in effect. The parties wish to proceed directly to mediation. Mediation fee is enclosed.

D. **REQUEST FOR MEDIATION.** We certify the children's needs are being met. The parties wish to proceed directly to mediation.

Mediation fee is enclosed.

We request authorization to go to private mediation.

2. DOCUMENTS ATTACHED. The following documents are attached:

A. *(If you checked 1(A) or (B), above, you must check the appropriate box below)*

A full settlement agreement resolving all issues;

A written statement that explains with whom the child(ren) will be residing, what the schedule for parent-child contact will be, and how the child(ren) will be financially supported;

An agreed upon interim Order.

If an interim order is requested, a proposed Child Support Order, Child Support Worksheet and Immediate Income Withholding Order must also be attached. *(These forms are available at the court clerk's office.)*

3. OTHER ORDERS REGARDING PARENTAL RIGHTS OR SUPPORT.

(Check the appropriate box.)

A. There are no other orders regarding parental rights or support of the child(ren).

B. There is another order regarding parental rights or support, but the temporary agreement conforms to the provisions of that order.

C. There is an existing parental rights or support order that is different from the temporary agreement. A copy is attached.

4. DOMESTIC VIOLENCE OR ABUSE HISTORY.

We certify that the following information is correct:

- A. Protection from Abuse Order(s) affecting the parties or their children.
 - None
 - Prior Order(s) no longer in effect
 - Order(s) currently in effect

[Name and Location of all Courts, Docket Numbers & Dates of all current and prior Orders]
Attach any existing Protection from Abuse Order.

- B. Criminal case(s) affecting contact between the parties or between a party and the child(ren).
 - None
 - Pending case(s)
 - Completed case(s)

[Name and Location of all Courts and Docket Numbers of all Cases]
Attach any existing Conditions of Bail or Conditions of Probation.

5. CONTESTED ISSUES.

The following issues are unresolved but do not require the court’s attention at this time.

- | | | | |
|---|---|---|--|
| <input type="checkbox"/> Parental Rights & Responsibilities | <input type="checkbox"/> Primary Residence | <input type="checkbox"/> Rights of Contact | <input type="checkbox"/> Child Support |
| <input type="checkbox"/> Actual or Imputed Income of party | <input type="checkbox"/> Spousal Support | <input type="checkbox"/> Real Estate | <input type="checkbox"/> Support |
| <input type="checkbox"/> Arrearage | | | |
| <input type="checkbox"/> Marital vs. Non-marital property | <input type="checkbox"/> Pensions or Benefits | <input type="checkbox"/> Allocation of Debt | <input type="checkbox"/> Personal |
| <input type="checkbox"/> Property | | | |
| <input type="checkbox"/> Guardian Ad Litem Fees | <input type="checkbox"/> Paternity | <input type="checkbox"/> Medical Insurance | <input type="checkbox"/> Attorney’s Fees |
| <input type="checkbox"/> Uninsured Medical Expenses | <input type="checkbox"/> Tax Exemption | <input type="checkbox"/> Other: _____ | |

6. NEXT COURT DATE. [Choose one or more of the following.]

The parties request that the Clerk schedule the following court date:

- An uncontested final hearing.
- A pretrial or status conference.
- Mediation.

If the next court event is an uncontested final divorce hearing, we understand the parties must file any required Financial Statement and must file a completed Certificate Regarding Real Estate prior to the hearing if one of the parties has an interest in any real estate. (These forms are available at the court clerk’s office.)

7. CERTIFICATION.

By signing this agreement, the parties certify that all issues affecting the child(ren) have been temporarily resolved. The parties ask the Court to:

- adopt the agreement as an interim order of the court and waive the case management conference;
- review the agreement and waive the case management conference. The parties understand that either party may request a case management conference if the agreement is not being followed.
- schedule mediation and a status conference thereafter; OR
- authorize private mediation and schedule a status conference in _____ days.

The parties understand that the Court will review this Certification and may require the parties to attend a case management conference even though they have filed this certificate.

Date: _____
_____ Plaintiff or Plaintiff's Attorney

Date: _____
_____ Defendant or Defendant's Attorney

CASE MANAGEMENT ORDER

The written agreement on parental rights and responsibilities and financial support of the children, is approved, and the Case Management Conference is waived.

The Agreed upon Interim Order is approved as an Order of the Court and the Case Management Conference is waived.

The Case Management Conference is not waived because

_____,
The Conference is scheduled for _____ at
_____ a.m./p.m.

The Clerk shall schedule the following court date(s):

The request for mediation is granted. Mediation will be held on _____
at _____ a.m./p.m.

The request for private mediation is granted.

A pretrial or status conference will be held on _____ at _____ a.m./p.m.

An uncontested final hearing will be held on _____ at _____ a.m./p.m.

Any required Financial Statement must be filed within ___ days from the date of this Order.

The deadline to serve discovery is ___ days from the date of this Order.

The entry will be "Case Management Order filed."

Dated: _____
_____ Magistrate/Judge

**IMPORTANT INFORMATION REGARDING
CASE MANAGEMENT CONFERENCE**

Your family case has been scheduled for a case management conference before a Family Law Magistrate. Trial counsel and parties must attend unless:

- You file a Certificate in Lieu of Conference with the court in advance of the conference date or
- You file an agreed to order with all required paperwork, which modifies an existing judgment or order with the court at least seven (7) days before the conference date.

You may file a Certificate in Lieu of Conference when the parties agree on interim arrangements for the children. The court clerk has a form available for this purpose.

The following matters will be discussed at the conference, and an order may be entered then or at a later hearing even if a motion for interim relief has not been filed.

1. Interim arrangements for the children, including residence, parent/child contact, health insurance and child support; interim responsibility for payment of periodic debts; and interim spousal support (if applicable).
2. Issues in dispute.
3. Deadlines for moving the case to resolution, exchange of information (discovery), and mediation.
4. Payment of fees, including any court mediation fee and attorney fees.

**YOU MAY BE ORDERED TO ATTEND MEDIATION. PLEASE COME TO
THE CONFERENCE PREPARED TO PAY YOUR PORTION OF THE \$160.00 FEE.**

5. Date and time of the next court event. **If you fail to attend the conference or if the case involves the establishment or enforcement of a child support obligation, a hearing may take place on the day of the conference.**

6. Referral to a judge. **When parental rights and responsibilities are in dispute, you may exercise your right to have a judge decide interim parental rights and responsibilities.** To do this, you must file a written request with the court clerk by the date of the conference. **You must still attend the conference with the magistrate.**

7. Other matters pertinent to the case. These may include required attendance at a parent education program; paternity testing; job searches; the appointment of a guardian *ad litem*; psychological evaluations; and investigations by the Dept. of Health and Human Services pursuant to 19-A M.R.S.A. § 905.

IN ORDER TO BE PREPARED TO DISCUSS ALL ISSUES, YOU MUST BRING THE FOLLOWING ITEMS WITH YOU TO THE CONFERENCE:

1. Copies of your last four (4) paystubs;
2. Copies of your most recent state and federal income tax returns;
3. Documents showing any health insurance coverage for yourself, the other party, and/or your children;
4. Documents showing your eligibility for or receipt of state or federal benefits (e.g., TANF, SSDI);
5. Copies of any orders affecting contact between you, the other party, and/or your children; and
6. A completed Child Support Affidavit (you may obtain a blank form from the clerk).

At the end of the case management conference, the Family Law Magistrate will enter a Family Division Scheduling Order that will determine the course of the proceedings. The Magistrate may also enter other orders, such as an interim order, or an order enforcing a child support obligation.

WARNING

If you are the responding party and wish to object to the complaint or motion, you must file your response within the time limits established by statute or court rule. Do not wait until the time of the case management conference to state your objections. For example, if the moving party asks for modification of a child support order and you do not respond within 30 days, the motion may be granted without a conference or hearing.

If a party fails to appear at the case management conference, any pleadings filed by that party may be dismissed with or without prejudice, a hearing may be held without further notice, and an interim order or a final judgment may be entered.

APPENDIX F

PROPOSED STATUTORY AMENDMENTS

4 M.R.S.A. § 183(1)(D)

Proposed amendments to 4 M.R.S.A. § 183(1)(D):

D. Family law magistrates shall employ appropriate case management techniques and have jurisdiction to hear and dispose of the following matters:

(1) Interim orders in actions involving the establishment, modification or enforcement of child support;

(2) Interim orders in actions involving divorce, legal separation, paternity or parental rights, including interim orders in postjudgment proceedings arising out of these actions, except that a contested motion concerning interim parental rights and responsibilities, excluding interim child support orders, may be determined by the family law magistrate only if both parties consent to determination of the issue or issues in dispute by the family law magistrate;

(2-A) Parental rights and responsibilities and parent-child contact orders entered pursuant to Title 19-A, section 4006, subsection 5 and section 4007, subsection 1, paragraph G to make such orders consistent with subsequently entered orders in matters included in subparagraphs (1), (2) and (3);

(2-B) Actions to enforce interim orders issued by magistrates.

(4) Final orders in a contested proceeding when child support is the only contested issue-, including final orders on motions to enforce child support orders. A magistrate's authority to determine child support includes the authority to allocate tax exemptions;

DRAFT

Maine District Court
447 Main Street
Springvale, Maine 04083



Wayne R. Douglas
Judge

Telephone: 459-1400

November 16, 2007

Hon. Barry J. Hobbins
Senate Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Hon. Deborah L. Simpson
House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Re: L.D. 477, "Resolve, Directing the Family Law Advisory Commission to Study Expedited Procedures for the Resolution of Parental Conflict"

Dear Senator Hobbins and Representative Simpson,

On behalf of the Family Law Advisory Commission, I am pleased to respond to the Committee's request that FLAC review and report back on recommendations of the Family Division Task Force regarding improvements in the family court process.

As you may recall, the Committee asked that FLAC "review, in light of the concerns underlying the LD 477 Resolve, the recommendations of the Family Division Task Force with regard to improving the responsiveness of the family court process, engage in further study within the limits of your resources, and report back to the committee. The genesis of the Judiciary Committee's request was L.D. 477, "An Act to Deter Parental Alienation." Last session, the Committee initially recast the bill into a Resolve directing FLAC to review numerous aspects of parental rights and responsibilities, and then subsequently narrowed the scope of FLAC's inquiry as set out above.

One of the primary concerns underlying the LD 477 Resolve was the need to establish quicker access to the courts to address and resolve parental conflicts.

This concern has grown out a perception that the family court lacks a user-friendly mechanism to obtain emergency orders, particularly when *pro se* litigants are involved. In these situations, some believe that parties may resort to other actions, such as protection from abuse proceedings, to address issues that more properly should be addressed in the context of a family court proceeding. One of the recommendations for change made by the Family Division Task Force addresses this need directly.

By way of background, the Family Division Task Force was established in June 2006 by the Maine Supreme Judicial Court for the purposes of evaluating the current operational practices and procedures of the Family Division, and recommending to the Maine Supreme Judicial Court changes to improve the Family Division's management and resolution of family matters. The recommendation directly addressing the concerns set out above is the proposed adoption of a new court rule establishing expedited hearings in family matters. Let me briefly describe the rule, and explain why FLAC endorses it in concept.

Essentially the proposed rule provides that a party (typically one of the parents or the guardian ad litem in a case) may request an expedited hearing on a motion filed in a family matter. The party requesting expedited hearing would fill out a request form (which accompanies the rule and is designed for ease of use by *pro se* litigants) and submit the request to the court. The rule provides that the opposing party be notified and given an opportunity to respond. However, the court may also act on a request without actual notice in emergency circumstances. The request would also have to accompany another filing—either the initial filing of a complaint in a new family action or a motion to enforce an existing order in a pending or completed family court action. The request would be presented to a judge or magistrate, who would then determine the need for expedition and schedule the matter accordingly.

There is no such rule at this time, although in practice, some courts have been handling these types of requests informally. Adoption of the proposed rule would formally institute a procedure, and provide guidance to parties and the courts in handling requests of this nature. The proposed rule provides a sensible family court procedure for obtaining an emergency order where needed, and promotes timely resolution of pressing family matters.

At the same time, the approach taken by the proposed rule guards against the prospect of opening the proverbial floodgates to excessive filings, and thereby diverting or straining judicial resources beyond the point where they would less

effectively serve the public's interest. Thus, FLAC believes that this rule balances effectively the demand for expedited access on family matters of pressing concern with the need to maintain and manage the court's dockets effectively. We therefore view the rule as having the potential to address the Committee's concern about lack of speedy access to the court in family matters.

Since it is envisioned that this procedure would be established by adoption of a court rule, no legislative action is needed. FLAC would be pleased to follow up with the Committee and inform you whether, and when, this rule is adopted. We are also prepared to report to the Committee on the effect of the rule on access once results are ascertainable. At the same time, FLAC views the fundamental underlying problem as being a pervasive lack of sufficient judicial resources to address the need, and is not optimistic that a rule change will correct the problem. Given that additional resources are not available, FLAC views the proposed rule as a partial fix that should be given the opportunity to work.

As always, FLAC appreciates the opportunity to serve the Committee in the area of family law. If you have any questions or concerns about this matter, or if we can be of further assistance on this issue, please let me know.

Thank you.

Sincerely,

cc: Family Law Advisory Commission Members