

MAINE STATE LEGISLATURE

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**REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY
OF THE 130th LEGISLATURE AND
THE MAINE SUPREME JUDICIAL COURT
ON CASES HANDLED BY THE
FAMILY DIVISION
OF THE
MAINE DISTRICT COURT**



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I. Introduction

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

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

Pursuant to this requirement, the State Court Administrator presents this 12th report concerning the Family Division. The following report provides an overview of Family Division case processing, data on cases handled by the Family Division, and an update on initiatives of the Family Division in calendar years 2019 and 2020.

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

II. Family Division Overview

a. Statutory Authority and Operational Structure

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

b. Family Matters Case Processing

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

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

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

Sixty-four percent of the family law magistrates’ salaries are covered by federal funds allocated to Maine under Title IV-D of the Social Security Act. 4 C.F.R. § 304.2(b)(2). By way of illustration, in the state fiscal year ending on June 30, 2020, Title IV-D funds paid for \$793,306 of the total \$1,245,875 for magistrates’ salaries.

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

i. Case Management Conference

In order to promptly assess and address a family’s needs, magistrates conduct a case management conference as the first step in processing family matters

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

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

ii. Mediation

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

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

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

iii. Final Hearings

When the parties are unable to reach a full agreement through mediation, the court will schedule their case for a final hearing. Pursuant to a pilot project established under 4 M.R.S. § 183(1)(D)(5), a magistrate may hear and dispose of all elements of final contested actions for divorce with children, legal separation with children, parentage, or parental rights and responsibilities provided that the parties consent in writing to a magistrate hearing the matter and that the hearing will not take longer than three hours. *See* Establishment of Family Law Magistrate Pilot

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

Project, Me. Standing Order JB-20-02 (effective June 1, 2020). A judge will preside over all other final hearings in family matters. *See* 4 M.R.S. § 183(1)(D); M.R. Civ. P. 110A(5)(B)(ii).

All final orders entered by magistrates as part of the pilot project referenced above are subject to direct appeal to the Law Court. Me. Standing Order JB-20-02 (effective June 1, 2020). All other final orders of a magistrate are subject to review by a District Court judge if a party files an objection within 21 days after entry of the magistrate’s final order. M.R. Civ. P. 118(a). When an objection is filed, a judge will review the record established before the magistrate and, with or without a hearing, may (1) adopt, modify, or reject the order, (2) set the matter for further hearing, or (3) recommit the matter to the magistrate with instructions. M.R. Civ. P. 118(a)(2). A party whose timely objection to the magistrate’s order was unsuccessful may appeal from a judge’s final judgment in accordance with the Maine Rules of Appellate Procedure. M.R. Civ. P. 118(b).

iv. Post Judgment Motions

When there has been a “substantial change in circumstances” since the entry of the most recent decree, and a modification would serve the best interest of a child, a party may ask the court to change provisions relating to parental rights and responsibilities in that decree by filing a post-judgment motion to modify. *Neudek v. Neudek*, 2011 ME 66, ¶ 10, 21 A.3d 88 (discussing 19-A M.R.S. § 1657(1))

(quotation marks omitted); M.R. Civ. P. 110A(b)(6)(B). Parties may also file motions to enforce or for contempt when the opposing party fails to comply with an existing court order. M.R. Civ. P. 110A(b)(6)(B); M.R. Civ. P. 66(d). All post-judgment motions asking to modify or enforce provisions related to minor children are assigned to a magistrate for case management. M.R. Civ. P. 110A(b)(6). Motions for contempt, however, must be referred to a judge. M.R. Civ. P. 110A(b)(6)(C). Post-judgment matters comprise approximately 40% of the total number family matters proceedings handled by district courts in Maine.

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

In calendar year 2019, there were 7,680 original family matters⁴ and 5,424 post-judgment motions⁵ for a total of 13,104 family matters filed. In calendar year 2020, the total filings decreased to 10,745, and consisted of 6,680 original family matters and 4,065 post judgment motions.

Table 1. Total Family Matter Filings

	CY19	CY20
Original Family Matter Filings	7,680	6,680
Post-Judgment Family Matter Filings	5,424	4,065
Total Number of Family Matter Filings	13,104	10,745

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

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

Of the 13,104 original and post-judgment family matters filed in 2019, approximately 11,344 cases were initially managed by magistrates.⁶ Magistrates handled approximately 8,521 of the 10,745 total family matters filed in 2020. In order to process the original family matter filings involving children, magistrates conducted 8,723 court events in calendar year 2019, and 7,165 court events in calendar year 2020. To process the post-judgment motions involving children, magistrates held 5,379 court events in 2019, and 4,089 court events in 2020.

Table 2. Family Matter Filings Handled by Magistrates

	CY 2019	CY 2020
Total Number of Family Matters Filed	13,104	10,745
Number of Family Matters Handled by Magistrates	11,344	8,521
Number of Magistrate Court Events to Process Family Matters Handled by Magistrates	14,102	11,254

III. Family Division Initiatives

a. COVID-19

The public health emergency created by the COVID-19 pandemic presented unprecedented challenges to the administration of justice to families. In response,

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

the Maine Judicial Branch implemented several initiatives to transform court processes in Family Division cases to allow for safe access to the courts during the pandemic. In family matters, these efforts included: (1) investment in technology to allow courts to hold family matter proceedings remotely; (2) transition to a remote mediation service for families; (3) launch of email filing; and (4) development and dissemination of additional resources to help parents navigate the court process during a pandemic.

i. Investment in Technology for Remote Proceedings

To reduce the risk of exposure to the public and court staff, the courts transitioned to a presumptively remote format for all family matter proceedings, except hearings on motions for contempt. In a matter of months, the Judicial Branch had to develop complex technology solutions for the creation of these virtual courtrooms. To date, these efforts have included:

- Purchase of 400 Zoom licenses to allow courts to hold court proceedings by video (Google Hangout was initially used for video hearings, but later was replaced by Zoom after deficiencies in quality and ease of use were identified);
- Extensive and ongoing training for clerks, judges, and magistrates on the use of Zoom;

- Installation of a Zoom Cart in every courtroom to allow the court to teleconference with parties remotely (Zoom Carts have large monitors and enhanced audio set-ups, and because they are mobile, they can be placed anywhere that will allow people in the courtroom and those who participate remotely to be both seen and heard).
- Purchase of “Rev,” a new automated closed captioning service for Zoom; and
- Purchase of software (“Citrix Sharefile”) to facilitate large file sharing and electronic signatures during virtual court sessions.

Though access to this technology has enabled the Family Division to keep the courts accessible during a pandemic, it has come with its own set of challenges. Magistrates report that the lack of in-person interaction has resulted in loss of a personal connection with parties, and has sometimes presented challenges with court control of the parties. Particularly in the northern regions of Maine where a lack of access to high speed internet and good cell phone coverage exists, the transition to a remote format has also, at times, resulted in the disruption of proceedings and the need for continuances.

On the other hand, the change in format⁷ has also produced some unexpected positive developments. Some parents report that the elimination of travel time to and

⁷ Prior to the COVID-19 pandemic, magistrates were conducting some status conferences for parties by telephone. However, the transition to a presumptively remote format for all family matter proceedings occurred as a result of the pandemic.

from a court proceeding, particularly for brief non-testimonial conferences, has allowed for participation in their court case without the need to take as much leave from their employment and without the expense of the travel. Additionally, litigants often experience increased levels of stress and anxiety when they walk into a courtroom—courtrooms are, after all, designed to convey a perception of authority and gravitas. While that perception may be crucial in certain case types, in a family matter, removing that perception can sometimes result in the easing of parents’ distress to enable them to more meaningfully participate in the proceeding involving their children.

ii. Virtual Mediation

In addition to court proceedings, court mediation also transitioned to a remote format in response to the COVID-19 pandemic. In the interest of public safety, all mediation was effectively stopped between March and June of 2020. In June of 2020, however, the courts began to conduct mediation in family matters by video or telephone conference call. The switch to remote mediation services resulted in several positive changes. It created more flexibility in scheduling mediation, with some mediators offering evening and weekend mediation options for parents whose work schedule makes participation during business hours difficult. Additionally, the virtual format expanded the pool of mediators by removing geographic limitations. Some survivors of domestic violence or sexual assault also reported feeling safer

mediating remotely as the virtual format permits them to remain in their own environment, rather than coming to the courthouse for mediation.⁸

iii. Email Filing

In order to reduce in-person traffic to the courthouse during the pandemic, the Maine Supreme Judicial Court issued pandemic management orders to allow email filing in several case types, including family matters. *See* PMO-SJC-3; *see also* PMO-SJC-3A. This effort required the development of new form notices of email filing, and the drafting of detailed clerk instructions to explain how to properly process and docket documents filed by email. Additionally, recognizing that many parties in family matters are self-represented, the Family Division of the Administrative Office of the Courts (AOC) drafted detailed guidance for the Maine Judicial Branch website with step-by-step instructions on how to successfully file a pleading by email.

iv. Resources for Families

The Maine Judicial Branch also expanded its self-help information for families in recognition of the stressful and uncertain environment that the pandemic created for families navigating the court system. This included: (1) publication of a detailed online “COVID-19 Q&A” that provides information about email filing,

⁸ Before the pandemic, when mediation in family matters involving domestic violence occurred in person at the courthouse, parties mediated in separate rooms without direct contact. Still, some survivors who have engaged in remote mediation report that avoiding the courthouse altogether allows them to stay in their own environments, where they feel safer.

modified court operations, and remote court proceedings; (2) development and publication of a pamphlet titled “Co-parenting During COVID-19” that provides tips and resources for parents; and (3) continued dissemination to parents of the Judicial Branch’s “Guide to Family Separation,” which is written in plain language and distills the family matter court process to simple and clear steps.

b. Electronic Filing System

In December 2016, the Judicial Branch announced the signing of a contract with Tyler Technologies to develop and implement an electronic filing system for the Maine state courts. The transition away from a paper-based system to a modern electronic filing system necessitated a herculean effort involving (1) the transfer of millions of records and accompanying information to a new case management system, (2) the development of court rules for electronic filing and access, and (3) reconfiguration of court operations. As the first phase of the implementation plan, the Maine Judicial Branch launched its electronic filing system (eFileMaine) in the Judicial Branch Violations Bureau. Then, after additional careful planning (and some unexpected setbacks, including a global pandemic), eFileMaine expanded in November 2020 to Bangor District Court, Penobscot Superior Court, and the Business and Consumer Docket statewide for several case types, including family matters. Implementation will continue in phases in other judicial regions of the state until eFileMaine is available statewide.

In preparation for the launch of eFileMaine, the Family Division of the AOC undertook a comprehensive review of every court form in family matters, protection from abuse, protection from harassment, child protection, and juvenile matters. More than 400 forms were included in this review. All forms were formatted for consistency, to improve visual access, and to provide references to the Judicial Branch website where litigants could obtain more information. The forms were also edited to adopt plain language and improve the flow and ease of use. The new forms were implemented in November 2020.

As part of the effort to improve ease of use of forms by families, the Family Division also developed new Title 18-C forms for minor guardianships, adoptions, and name changes for use by all probate courts and district courts in Maine. Prior to this effort, each probate court used its own forms, which differed not only among probate courts, but were also distinct from the forms used in these case types in the Maine District Court. The development and promulgation of forms for statewide use, both in the Maine District Court and in all probate courts, has created more consistency for families filing these cases statewide.

d. Access and Visitation for Families in Maine

The Family Division of the AOC administers an annual federal grant from the Access and Visitation program of the federal Office of Child Support and Enforcement (OCSE). The funds can be used for a wide range of family-centered

services, including: co-parent education, mediation, supervised visitation, and development of parenting plans. Allocation of the funds is determined by the Access and Visitation Advisory Committee⁹ (the Committee) established by the Chief Judge of the District Court.

In July 2019, the Committee approved the posting of a new request for proposal (RFP). The priorities in this RFP largely matched what was issued in the 2015 RFP, and again highlighted the desire for technological initiatives to provide A&V services to more of the state. The RFP also stated that the money primarily should be used to provide scholarships to parents in need.

The Committee awarded funding to all of the bidders to provide co-parent education, high-conflict co-parent education, and supervised visitation. The awards also included an award to the Kids First Center to outfit its classroom for co-parent education in Scarborough with webinar equipment, which during the COVID-19 pandemic has permitted access to co-parent education when in-person classes are not safe. It has also provided co-parent education programming to areas of the state that currently do not have an in-person program, such as Aroostook and Washington Counties. Additionally, the Committee subsequently awarded a small amount of money to a new provider—Family & Community Mediation (FCM)—to provide

⁹ The Access and Visitation committee includes judicial officers, judicial branch administrators, domestic violence and sexual assault advocates, a representative of the Maine Department of Health and Human Services, Support Enforcement Division, and members of the family law bar.

statewide community-based virtual mediation for families who need mediation services above and beyond the mediation services offered by the courts, or who wish to mediate outside the court system in an attempt to resolve their dispute without the need for a court action.

IV. Conclusion

Even in the midst of a global pandemic, the Family Division continued to support the Maine District Court to address the needs of families and children involved in family matters. Magistrates remained committed to managing these cases to ensure that children's needs were met during the pendency of the case, parents understood the court process, and parents had access to the tools necessary to resolve their disputes, whenever possible. The unprecedented challenges that the Family Division experienced over the past year resulted in equally unprecedented solutions, some of which resulted in some positive developments that may help us to improve court process even after the pandemic loosens its grip. Moving forward, the Maine Judicial Branch will remain committed to adapting to circumstances as needed, and continually examining family matter court process and resources to identify opportunities for improvement.