

MAINE STATE LEGISLATURE

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**REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY
OF THE 131st 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 to “provide a system of justice that is responsive to the needs of families and the support of their children.” 4 M.R.S. § 183; P.L. 1997, ch. 269. To carry out this central purpose, the Legislature authorized the use of family law magistrates¹ to process family matters in a way that ensures children’s needs are met.

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

Pursuant to this requirement, the State Court Administrator presents this 13th report concerning the Family Division. The following report provides an overview of Family Division case processing, data on cases handled by the Family Division in calendar years 2021 and 2022, and an update on initiatives of the Family Division for the same period.

¹ The family law 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 can 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, except for post-judgment motions for contempt involving children, which are referred directly to a judge, M.R. Civ. P. 110A(b)(6)(C), all family matters involving children are assigned first to a family law magistrate. M.R. Civ. P. 110A(a). Family law magistrates are judicial officers with limited

jurisdiction. 4 M.R.S. §§ 183(1)(D)-(F); M.R. Civ. P. 110A, *Family Law Magistrate Authority*, Me. Admin. Order JB-05-18 (effective August 1, 2005). Family law 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, family law 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-five percent of the family law magistrates’ salaries and benefits 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, 2022, Title IV-D funds paid for \$824,983 of the total \$1,273,414 for family law magistrates’ salaries.

Currently, there are eight family law 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 family law magistrates perform provides a significant benefit to Maine’s families and to the Maine Judicial Branch.

i. Case Management Conference

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

involving children. At the case management conference, the family law 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 family law magistrate learns at the case management conference, the family law magistrate may order the parents to attend a parent education program, refer them to meet with a mediator, and/or schedule an interim hearing.

One of the family law 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 family law 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 family law magistrate may be "decided de novo [i.e., anew] 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 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 \$160,² 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 Hearing

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 family law 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 family law magistrate hearing the matter and that the hearing will not take longer than three hours. *See* Establishment of Family Law Magistrate Pilot Project, Me. Standing Order JB-20-02 (effective June 1, 2020).

² The fee is generally allocated equally between the parties. Parties who cannot afford the mediation fee can apply for a fee waiver.

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 family law 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 family law magistrate are subject to review by a District Court judge if a party files an objection within 21 days after entry of the family law magistrate’s final order. M.R. Civ. P. 118(a). When an objection is filed, a judge will review the record established before the family law 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 family law magistrate with instructions. M.R. Civ. P. 118(a)(2). A party whose timely objection to the family law 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 family law magistrate for case management. M.R. Civ. P. 110A(b)(6). Motions for contempt, however, must be referred to a judge for case management and, if necessary, final hearing. M.R. Civ. P. 110A(b)(6)(C). Post-judgment matters comprise approximately 36% of the total number family matters proceedings handled by district courts in Maine.

c. Cases Handled by Family Division in Calendar Years 2021 and 2022

Currently, there are only eight family law magistrates to serve the entire state of Maine—a number that has not increased since 1997. The family law magistrates carry a heavy caseload and bring enormous benefit to families in Maine. To illustrate, in calendar year 2021, there were 6,817 original family matters³ and 3,915 post-judgment motions⁴ for a total of 10,732 family matters filed. In calendar year 2022, the total filings decreased to 10,147, and consisted of 6,482 original family matters and 3,665 post judgment motions.

³ 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.

⁴ Post-judgment motions in family matters include motions for contempt, motions for relief from judgment, motions to enforce, and motions to modify.

Table 1. Total Family Matter Filings

	CY2021	CY2022
Original Family Matter Filings	6,817	6,482
Post-Judgment Family Matter Filings	3,915	3,665
Total Number of Family Matter Filings	10,732	10,147

Of the 10,732 original and post-judgment family matters filed in 2021, approximately 7,972 filings were initially managed by the eight family law magistrates of the Maine Judicial Branch.⁵ Family law magistrates handled approximately 7,543 of the 10,147 total family matter filings in 2022. To process the original family matter filings involving children, family law magistrates conducted 5,030 court events in calendar year 2021, and 5,408 court events in calendar year 2022. To process the post-judgment motions involving children, family law magistrates held 8,437 court events in 2021, and 6,785 court events in 2022.

Table 2. Family Matter Filings Handled by Family Law Magistrates

	CY 2021	CY 2022
Total Number of Family Matters Filed	10,732	10,147
Number of Family Matter Filings Handled by Family Law Magistrates	7,972	7,543
Total Number of Family Law Magistrate Court Events to Process Family Matter Filings Handled by Family Law Magistrates	13,467	12,193

⁵ Because family law 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).

III. Family Division Updates

a. Revision to the Family Division Rules of Civil Procedure

In September 2018, the Advisory Committee on the Maine Family Rules (FRAC)⁶ was established to make recommendations to the Maine Supreme Judicial Court to improve the rules of procedure for Family Division cases. The existing Family Division Rules are a chapter of the Maine Rules of Civil Procedure.⁷ Under the current framework, the general Maine Rules of Civil Procedure apply if a specific Family Division Rule does not address the matter. As a result of this co-existence, many procedures in Family Division matters are governed by rules of procedure that were developed for civil actions that do not involve the sensitive dynamics of a family matter.

Following analysis of the current procedures for Family Division cases, FRAC determined that many of the civil rules of procedure are not sufficiently tailored to the needs of a Family Division case. For example, the scope of discovery permitted under the Rules of Civil Procedure is very broad and often results in unnecessary and expensive discovery practice in family matters where preservation of marital assets to support separated households should be a priority. Additionally,

⁶ FRAC members includes representatives of the Maine Family Bar, staff from the Family Division of the MJB Administrative Office of the Courts, and judicial officers. The current roster is available on the MJB website at: <https://www.courts.maine.gov/about/committees/fam-rules.html>

⁷ The Family Division Rules consist of Rules 100 to 129 of the Maine Rules of Civil Procedure.

some of the discovery options, such as requests for admissions, are not well suited for family matters where most litigants are self-represented.

Due to the breadth of civil procedures FRAC wanted to modify for Family Division cases, FRAC determined in late 2019 to move forward with proposing to the Supreme Judicial Court a standalone set of rules for Family Division cases (i.e., family matters, protection from abuse/harassment, child protection, and probate), rather than trying to make extensive amendments to the existing rules. Following a brief interruption to their meetings due to the onset of the pandemic, FRAC has since resumed its effort to develop this body of rules and has continued to meet monthly to work on this project.

FRAC's goal is to draft a proposed set of rules that are customized for family matters and more accessible to litigants through increased use of lists, instead of long, dense block paragraphs, and plainer language for litigants. FRAC intends to propose to the Supreme Judicial Court the standalone set of rules Family Division cases (i.e., family matters, protection from abuse/harassment, child protection, and probate) in 2023. If the Supreme Judicial Court decides to move forward with FRAC's proposal, the rules will then be posted for public comment prior to promulgation.

b. Statutory Expansion to Family Law Magistrate Authority

In the second session of the 130th Maine Legislature, Public Law 723 was passed to expand the authority of family law magistrates to hear (1) all interim motions concerning parental rights and responsibilities, and (2) pretrial and interim elements of a child protection proceeding. Previously, when a party filed a contested interim motion concerning parental rights and responsibilities (excluding child support issues), the family law magistrate was authorized to hear the contested motion only if both parties consented to the determination of the issue in dispute by the family law magistrate.

Public Law 723 was a welcome change for the processing of family matters for two main reasons. First, because family law magistrates, not judges, provide case management for family matters with children throughout the life of the case, they are well positioned to determine interim issues in dispute as they are more familiar with the facts of the case and the parties. Second, scheduling interim hearings with a judge often resulted in delay to the case as judges' schedules are less flexible than the schedules of family law magistrates.

To implement Public Law 723, the Maine Judicial Branch amended court form, FM-087, *Important Information Regarding Case Management Conferences* that is provided to litigants in family matters. Additionally, M.R. Civ. P. 110A(b)

was amended to remove the process by which the parties could object to a family law magistrate determining interim parental rights and responsibilities.

c. Resources for Court Users

Increasingly people using the courts cannot afford an attorney and participate in court without counsel. The stress of participating in a court case involving a litigant’s family, coupled with the complexity of the relevant laws can be a daunting task for a court user. To better support self-represented litigants, the Supreme Judicial Court formed the “Court Orientation and Public Education Committee” (COPE) in 2022.⁸ The purpose of COPE is to research and develop resources, practices, and policies to inform and support court users. A major goal of these methods and materials is to help self-represented litigants facilitate their full and fair engagement in court proceedings and access to justice.

COPE has developed materials for various case types, but family matters remain one of its central focuses given the volume and percentage of self-represented litigants in these matters. COPE is in the process of working with a professional videographer to produce several videos about court process, including a video that explains how to file a divorce or parental rights and responsibilities case, and a second video that explains how to change or enforce a court’s final order of divorce

⁸ COPE members include a Supreme Judicial Court justice as liaison to the Court, a District Court Judge, MJB Administrative Office of the Courts, and a court clerk. COPE consults with external stakeholders on its projects, especially to solicit feedback on proposed resources.

or parental rights. COPE is also creating a trifold that will describe how to file a divorce or parental rights and responsibilities case in simple terms. These resources will add to the existing publications of the MJB, which include a detailed guide on family separation. COPE expects these resources to be available later this year. The goal is to present this information in different formats and levels of detail in recognition of different court users' learning styles and needs.

d. Justice for Families Grant

The Maine Judicial Branch administers an annual federal grant from the Access and Visitation program of the federal Office of Child Support and Enforcement (OCSE). The purpose of the grant is to fund a wide range of family-centered services that are critical for families involved in a divorce or parental rights and responsibilities case, including: co-parent education, mediation, supervised visitation, and development of parenting plans. The Maine Judicial Branch was selected as the administering entity for this federal grant when it was first made available to Maine in 1997 because the grant's purpose aligned with the mission of the then newly created Family Division to support the development of co-parent education programs. To aid in the administration of the grant and make recommendations as to the services the grant supports, the Supreme Judicial Court established the Access and Visitation Advisory Committee.

In 2021, the Committee researched additional opportunities for funding beyond the Access and Visitation grant to expand, without sacrificing funding to current sub-recipients, the availability of supervised visitation services for families who need this service but are not involved in the child welfare system. As a result of this effort, the Committee helped to coordinate the submission of an application for the Justice for Families (JFF) grant administered by the Office on Violence Against Women (OVW) to expand the availability of affordable supervised visitation services in Maine. In addition to supervised visits, the JFF grant application requested funding to provide domestic violence training to court-based and court-related personnel who work with families with a history of domestic violence, dating violence, sexual assault, and stalking. The application was submitted by the Maine Coalition to End Domestic Violence (MCDEV) with the Maine Judicial Branch as a project partner.

In August 2022, OVW announced that Maine was awarded a JFF grant in the amount of \$550,000 over a three-year period to partner with (1) Home to Home to establish supervised visitation services in Lewiston, Maine, and (2) the Battered Women's Justice Project to provide domestic violence training on their SAFeR model.

Home to Home is a non-profit organization that has been providing supervised visitation since 2002, primarily for parents who have been ordered by the court to

have supervised contact with their children as part of a family matter or protection order case. Lewiston was selected as the proposed site for expansion of their supervised visitation services because, at the time of the grant application, Lewiston District Court had the highest number of PFA filings over a three-year period (2018-2020). Despite having a population that is 55% smaller than Portland, Lewiston's three-year average from 2018-2020 was 649 PFA filings per year, as compared to Portland's average 615 PFA filings per year.

The Battered Women's Justice Project (BWJP) is a collective of national policy and practice centers at the intersection of gender-based violence and legal systems. BWJP developed the SAFeR model in consultation with the National Council of Juvenile and Family Court Judges and representatives from the Association of Family and Conciliation Courts, with generous support from the U.S. Department of Justice Office of Violence Against Women. The model is informed by researchers, scholars, and expert practitioners, as well as battered and battering parents across the country and around the world. SAFeR is an approach to decision making in family matters involving intimate partner violence (IPV). It consists of four parts: (1) screening for IPV; (2) assessing the full nature and context of IPV; (3) focusing on the effects of IPV; and (4) responding to IPV in all recommendations, decisions, and interventions. The National Council of Juvenile and Family Court Judges and the Center for Court Innovation train on the SAFeR model as part of their

custody curriculum. BWJP reports it has trained approximately 20,000 people nationwide – approximately 20% of whom are judges – on the SAFeR model since its creation. The JFF grant will provide funding for a multidisciplinary one-day conference on the SAFeR model to court-based and court-related personnel, including judicial officers, attorneys, guardians ad litem, child protection case workers, and advocates. The anticipated date of the training is the fall of 2023.

The Maine Judicial Branch is proud to be a partner in this effort to help families in Maine through the expansion of the much-needed supervised visitation services in Lewiston and training to court-based and court-related personnel on the SAFeR model.

IV. Conclusion

The Family Division of the Maine Judicial Branch remains committed to its statutory purpose of providing “a system of justice that is responsive to the needs of families and the support of their children.” 4 M.R.S. § 183. In CY 2021 and 2022, the eight family law magistrates of the Maine Judicial Branch continued to manage a large volume of family cases. Outside the courtroom, Maine Judicial Branch administrators worked diligently to implement improvements to the Family Division case processing, provide better information to court users, and support efforts to make the processes more accessible and better tailored to the needs of the families the Family Division serves.