

## **RULE 101. COMMENCEMENT OF ACTION**

(a) Filing. Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. Also, accompanying any complaint, petition, or motion for post-judgment relief shall be a notice regarding Electronic Service. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

(b) Complaint, Petition or Motion Form. In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence. A party seeking to be adjudicated a de facto parent of a child must file with his or her initial pleadings an affidavit alleging under oath specific facts to support the existence of a de facto parent relationship as required in 19-A M.R.S. § 1891. The pleadings and affidavit must be served upon all parents and legal guardians of the child and any other party to the proceeding.

(c) Minor as a Party. Notwithstanding the provisions of Rule 17(b), a minor party to any action under this chapter need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Nothing in this rule shall be construed to change the current and limited matters in which a minor may be a party to the action.

### **Advisory Note – July 2018**

The amendment to Rule 101, together with amendments to Rules 3, 4, 5(b), and 11 of the Maine Rules of Civil Procedure, is part of a package of simultaneous amendments to require parties who are represented by attorneys to serve pleadings and other papers electronically upon one another or by delivering copies pursuant to Rule 5(b)(1) following service of the summons and complaint under Rule 4. Parties who are not represented by an attorney may opt in to Electronic Service.

A more detailed description of Electronic Service and the procedures for complying with its requirements is stated in the Advisory Note to Rule 5.

### **Advisory Note - July 2016**

The last two sentences in Rule 101(b) were added to reflect the requirements contained in the Maine Parentage Act with regard to de facto parentage. 19-A M.R.S. § 1891.

### **Advisory Notes June 2008**

Rule 101 is based on Rule 3 with the change that a Family Division action may be initiated by filing (i) a complaint; (ii) a petition; or (iii) a motion for post-judgment relief. Because of the wide variety of potential Family Division actions and court hearing or return dates, the second sentence of subdivision (a) notes that accompanying any particular complaint, petition, or motion for post-judgment relief must be a notice to the parties served indicating the specific time within which any response to the complaint, petition or motion must be filed and the court where that response must be filed. For example, some actions may be subject to a fairly prompt court hearing. Others await an answer within a specific time, usually 20 days, before beginning processing. Absent some specific statutory or rule based timing or filing requirement, the deadlines for filing the complaint, petition or motion and filing any return of service would be as specified in Rule 3.

Forms will need to be developed to provide the appropriate notice for each type of action, so that the response time and means of response can be indicated

when the complaint, petition or motion is served. Present court forms will have to be reviewed to assure compliance with the overall requirements of these rules.

Subdivision (b) tracks Rule 80(b) but with some reordering of sentences and an updated reference to the Uniform Child Custody Jurisdiction and Enforcement Act. A sentence is added noting that a summary sheet must be filed with each initiating action. The filed documents must comply with the information disclosure requirements in 19-A M.R.S. § 1753(1)-(4).

Subdivision (c) tracks the first sentence of Rule 80(e). A minor party involved in an action under this chapter need not be represented by a next friend, guardian ad litem, or other fiduciary, unless ordered by the court. The second sentence of subdivision (c) is new, to emphasize that the reference to a minor being a party to an action is not intended to change the current and limited matters in which a minor may be a party. Other issues in Rule 80(e) relating to appointment and compensation of a guardian ad litem are addressed in Rule 107 that more generally addresses court actions available in preliminary proceedings.